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Labour Relations Board

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BRITISH COLUMBIA

LABOUR RELATIONS BOARD

2003
ANNUAL REPORT

Ministry of Skills Development and Labour
Honourable Graham Bruce, Minister

January 19, 2005

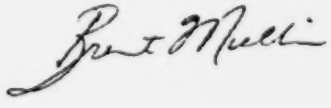
The Honourable Graham Bruce
Minister of Skills Development and Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Minister:

RE: Labour Relations Board 2003 Annual Report

I am pleased to forward the 2003 Annual Report of the Labour Relations Board for the year ended December 31, 2003. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,
LABOUR RELATIONS BOARD



Brent Mullin
Chair

Enclosure

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CHAIR'S MESSAGE

In the Board's previous Annual Report I focused on the Core Review and the challenges that review and subsequent budget cuts posed to the Board in maintaining the highest possible levels of service. I am pleased to report that the Board has succeeded during this past year in maintaining services. I wish to thank the Board's staff for their continued dedication and efforts in that regard. As a group we also wish to thank the labour relations community for their cooperation with our efforts.

Significant steps were taken during the year internally in making our existing computer system more responsive and efficient and in streamlining our work processes. While these developments are likely not visible externally, they have greatly assisted us in meeting our challenges.

On September 4, 2003 the Board held an open house in its new premises. We thank those who attended. During the ceremonies we dedicated our largest hearing room to Bud Gallagher. Bud was instrumental in helping us meet our budget challenges and in helping us obtain our new, significantly more cost effective premises. The G. Bud Gallagher Room signifies our thanks to Bud.

The Cost Recovery Program became effective January 1, 2004. Through careful preparation and communication with the labour relations community in 2003, the program was introduced with very few problems or complications. The Board's Annual Report for 2004 will be able to provide an analysis of the first year of operations of the program.

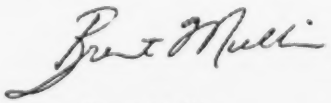
During the year the Board undertook an initiative to consider developing a set of timelines for issuing decisions. A contractor was chosen to study the issue after an open tendering process. A key component of the contract was to consult with the labour relations community in a number of ways, including a comprehensive questionnaire. Former Board Vice-Chair Maria Giardini coordinated the questionnaire. A report to the Board, with recommendations, is due in 2004.

During 2003 our Registrar, Lisa Hansen, retired from the Board. Lisa was an outstanding contributor at the Board, both in her leadership in the critical tasks in the Registry and in her relations with the community. We will miss her greatly and, on behalf of the community and the Board, thank her for her service.

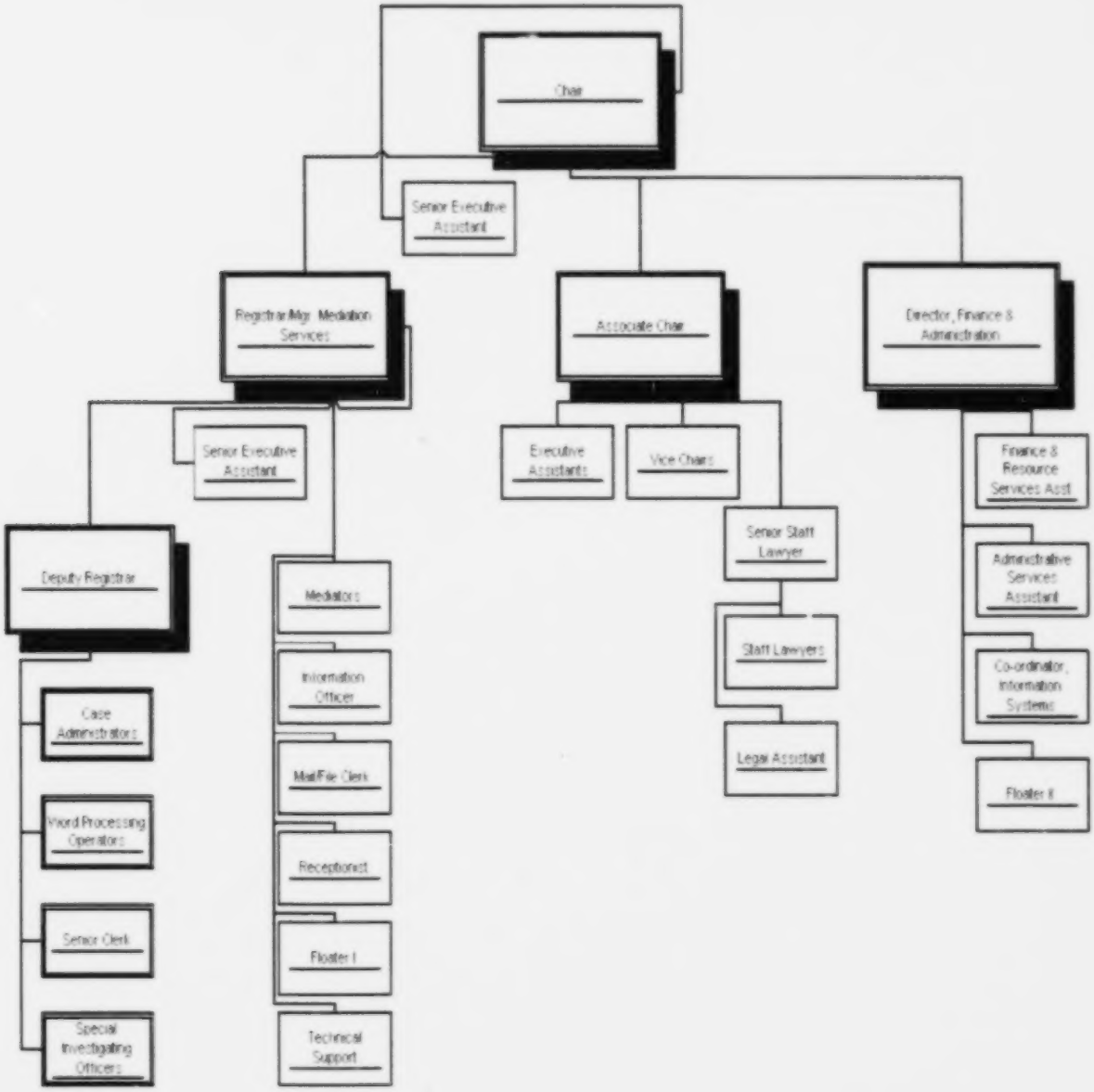
With the departure of Lisa as our Registrar, Vice-Chair Mark Brown assumed the roles of Vice-Chair and Registrar as well as Manager, Mediation Services. Mark had for some time already been serving in a dual capacity as Vice-Chair and Mediator at the Board. His accomplishments in that regard are exceptional. We are very fortunate to have him take on the combination of tasks in his new position and we thank him for it.

We were also very fortunate to obtain OIC appointments for three new Vice-Chairs: Najeeb Hassan, Lisa Southern, and Allison Matacheskie. All three bring tremendous talents and experience to their new tasks and we greatly look forward to working with them.

The Board continues to receive commitment and expertise from its Vice-Chairs, Mediators, and staff. As a result, I am confident we will continue to meet our mandate under the Code in serving the labour relations community and public interest of British Columbia.



Brent Mullin
Chair


Chair
Senior Executive Assistant
Registrar/Mgr. Mediation Services
Associate Chair
Director, Finance & Administration
Senior Executive Assistant
Executive Assistants
Vice Chairs
Finance & Resource Services Asst.
Deputy Registrar
Mediators
Senior Staff Lawyer
Administrative Services Assistant
Information Officer
Staff Lawyers
Co-ordinator, Information Systems
Case Administrators
Mail/File Clerk
Legal Assistant
Word Processing Operators
Receptionist
Floater II
Senior Clerk
Floater I
Special Investigating Officers
Technical Support

I. THE BOARD

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with responsibility in labour relations matters under several other statutes.

In carrying out its mandate, the Board must at all times have regard to the duties of the Code. These are set out in Section 2(1):

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
(a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
(b) fosters the employment of workers in economically viable businesses,
(c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
(d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
(e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
(f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
(g) ensures that the public interest is protected during labour disputes, and
(h) encourages the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(3) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. The Chair designates one of the Vice Chairs to act as Associate Chair and one to act as the Registrar and Manager, Mediation Services. The Chair, along with the Associate Chair, establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117(4) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chair of Adjudication and the Registrar/Manager, Mediation Services, report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at all proceedings of the Board and on all panels of which the Chair is a member.

C. REGISTRY

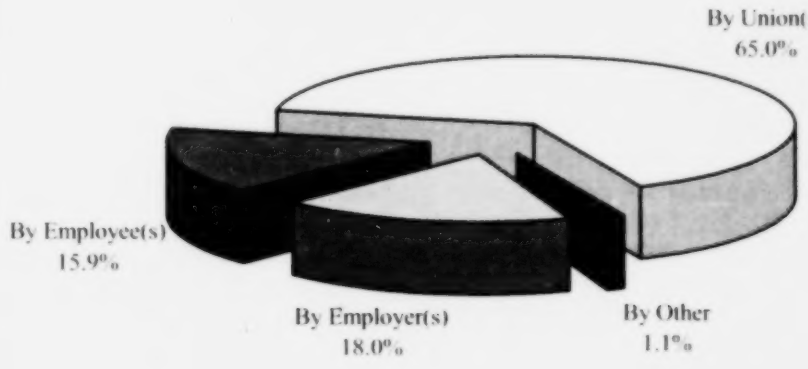
Every application received by the Board is processed through the Registrar's office. Administration and progress of each case is overseen by the Registry until the matter is finally disposed of. Four case administrators, each dealing with a geographic area of the Province, are responsible for initiation of applications and the conduct of files.

Processing of all applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

Legislated time frames, combined with established Board policies and procedures, result in approximately 43 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints must be adjudicated within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, case administrators are responsible for completing all necessary procedures before files are forwarded to Adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.

2003 Applications and Complaints by Type of Applicant



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their case load involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 11 of the statistical tables, approximately 45 percent of unfair labour practice complaints and Part 5 complaints referred to officers are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers of the Employment Standards Branch of the Ministry of Labour. For example, every application for certification or decertification requires a report by an Industrial Relations Officer. Such reports are public, with only names and numbers remaining confidential to the Board.

Both SIOs and Industrial Relations Officers (IROs) also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues.

In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them.

In accordance with Section 122(3) of the Code, the Board appointed its first Information Officer, effective February 1, 1994. His responsibilities to date have encompassed two main areas: handling incoming inquiry calls, and preparing written material for the public and the labour relations community.

The Information Officer deals with between 30 and 40 calls per day, from employers, unions, individual employees and media representatives. In September of

2002, the Information Officer position was reduced to three days per week.

The Board's publications include an *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The Guide is also available in French, Chinese and Punjabi translations. The day after the Notice and Guide are sent to employers, the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process*, has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual has now been in use since April, 1995.

The Board's web site was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The web site address is www.lrb.bc.ca.

D. COLLECTIVE AGREEMENT ARBITRATION BUREAU

Effective July 5, 2002, and pursuant to the Labour Relations Code Amendment Act, 2002, the Collective Agreement Arbitration Bureau was brought under the administration of the Labour Relations Board. Pursuant to Section 83(1) of the Code, the Chair designated the Board's Deputy Registrar, Mark Clark, as Director of the Bureau.

The primary function of the Bureau is to appoint arbitrators where one of the parties seeks an expedited form of arbitration, where the parties seek consensual mediation/arbitration, or where there is a failure to appoint or constitute an arbitration board by one of the parties. In addition, the Bureau also appoints settlement officers to assist the parties in resolving grievances filed under collective agreements. The Labour Relations Board offers the services of its special investigating officers (SIO's) and mediators as settlement officers to assist the parties in resolving the grievances prior to an arbitrator's appointment by the Bureau.

Since July 5, 2002, applications filed with the Bureau for the appointment of arbitrators and/or settlement officers are processed through the Registry of the Labour Relations Board. The Registry's case administrators are generally responsible for the day-to-day administrative processing of the applications, with the Director responsible for the selection/appointment of the arbitrator in each case.

The Bureau, though its director, must also maintain a register of arbitrators. A joint advisory committee, as appointed by the Minister, must advise the director on

the training and education of arbitrators and settlement officers, research and publication of information about arbitrations, and establishment and maintenance of a register of arbitrators.

The Joint Advisory Committee comprises two representatives of unions, two representatives of employers and two representatives of arbitrators, along with the Director who is the chair of the committee.

E. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the *Labour Relations Code*. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, close to 1,400 cases are adjudicated each year. A comparison of cases assigned for adjudication and adjudicated for the past six years is set out in the accompanying table. The Adjudication Division published 446 decisions. Summaries of the key cases are found elsewhere in this Report.

A major portion of the Division's workload continues to be to the adjudication of expedited applications (including certifications, unfair labour practice and Part 5 applications). During 2003, expedited applications comprised about 67% of cases received in the Board's major adjudication areas.

As of December 31, 2003 the Board had 10 Vice-Chairs and 3 Staff Lawyers.

	1998	1999	2000	2001	2002	2003
Applications Assigned for Adjudication	1,584	1,603	1,365	1,258	860	890
Applications Adjudicated	1,562	1,628	1,404	1,293	957	886
Applications Outstanding at Year End	435	410	371	336	239	249

F. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship and collective bargaining information. These and other services are provided under the direction of the Manager, Mediation Services.

Information about the services available from the Mediation Division can be obtained via the Board's web site (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the *Labour Relations Code* administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

The majority of mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55. In 2003, mediators were appointed to 127 cases under Section 74 and 9 cases under Section 55. Mediators were also involved in a further 25 cases which were carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain public sector disputes is also part of the mandate of the Mediation Division.

Conflict Management

During 2003, the Mediation Division revised the focus of its conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design and implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest-based problem solving, the use of interest based and rights based processes, promotion of dispute resolution throughout all levels of the organization. Openness and broad based participation are encouraged and emphasis is also placed on the importance of feedback and continuous self-evaluation.

Relationship by Objective Program

One of the forums for exploring conflict and designing conflict management systems has been the Relationship by Objectives program. The program which was originally designed as a two-day exploratory retreat has been refocused to place greater emphasis on skills in effective communication and interest based problem solving.

In a preliminary assessment, Mediation staff determine if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including meetings, surveys, and/or focus group discussions. Following this initial assessment, a representative sampling of the stakeholders attend a two or three-day session away from the workplace. Two mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address and manage the identified conflicts. These strategies take the form of written action plans with specific goals, timeframes for achieving the goals and assignment of specific individuals responsible for ensuring that action plans are carried out.

Labour Management Consultation Committees

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistance is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of a day, depending on the needs of the parties.

G. ADMINISTRATION

Information Systems

The Board has a Compaq Alpha Server computer running a Digital UNIX operating system. The in-house applications running on the computer are written in PowerHouse and the information/data collected is stored in an Interbase database. The Board is also running Microsoft Windows NT Server 4.0 as a file and print server.

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, library management and computer aided research.

Finance and Administration

The Finance and Administration Department is responsible for human resource matters including recruitment, payroll and benefits administration, financial management including budget, accounts payable/accounts receivable and is also responsible for all security and facilities matters.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

II. BOARD MEMBERS AND MEDIATORS

As of December 31, 2003 the Board consisted of the following members:

EXECUTIVE

BRENT MULLIN, *Chair*

Brent Mullin's education includes a B.A. from the University of Victoria, an M.A. from Queen's University at Kingston, Ontario, and an LL.B. from the University of British Columbia. From 1983 to 1992 he practised labour relations, employment and human rights law in Vancouver, British Columbia at Russell & DuMoulin (now Fasken Martineau DuMoulin). From 1992 to 1998 he served as a Vice-Chair at the British Columbia Labour Relations Board, then returned to the practice of labour law at Fasken Martineau DuMoulin. In January 2002 he was appointed Chair of the British Columbia Labour Relations Board and in August 2002, Chair of the Employment Standards Tribunal.

MARK J. BROWN, *Vice Chair and Registrar/Manager Mediation Services*

Mark Brown was appointed to the Board as Vice Chair commencing February 1, 1996. Mark also served as a Board Mediator commencing in March of 2001. In September of 2002 as part of the Board's restructuring initiative, Mark was appointed Manager Mediation Services. In September of 2003 Mark was appointed Registrar as well. Mark graduated from Ryerson in Toronto in 1977 with a Bachelor of Business Management degree. He joined the Canadian Red Cross as an Administrator of one of its centers in Toronto. In 1981 he joined Versa Services Ltd. as its Industrial Relations Manager responsible for collective bargaining and labour relations for Canada. From 1985 to 1995 he was employed by the Health Employers Association of B.C., and one of its predecessor associations. As the Director of Consulting Services, he was responsible for collective bargaining, third party hearings and human resource management for the community care sector. In 1995 he briefly held a similar position for the Community Social Services Employers' Association before joining the Board.

MICHAEL FLEMING, *Associate Chair*

Michael Fleming obtained a B.A. from Simon Fraser University in 1978 and worked with the Ministry of Human Resources as a social worker until 1983. He then worked for the Canadian Farmworkers Union appearing before a number of tribunals and courts on behalf of the members. He received an LL.B. in 1988 from the University of British Columbia and then articled and practised law with the firm of Rush, Crane & Guenther until 1990. From 1990 to his appointment to the Labour Relations Board as Vice Chair in 1997, he was employed by the BCGEU holding several positions and appearing before various tribunals and arbitrators on behalf of the Union and its members. He was appointed as the Associate Chair in the fall of 2002.

VICE-CHAIRS

NAJEEB HASSAN, *Vice Chair*

Prior to his appointment, Hassan was employed with the Health Employers' Association of B.C. as a senior labour-relations consultant, where his responsibilities included the preparation and presentation of industry-significant arbitration for Labour Relations Board proceedings. He has extensive collective bargaining experience, having acted as the assistant spokesperson for health employers in 1998 and during negotiations with health unions in 2001.

SHARON KEARNEY, *Vice Chair*

Sharon Kearney is a graduate of the University of British Columbia where she received a B.A. (Honours) in 1981 and an LL.B. in 1986. She articled in British Columbia and was called to the B.C. Bar in 1987. She practiced management side labour law with the firm of MacDonald Shier from 1987 to 1989. She then joined the Labour Relations Branch of the British Columbia Provincial Government, where she represented the interests of the Government as employer in grievance arbitrations, Labour Relations Board matters and collective bargaining. In 1993 Ms. Kearney joined Ladner Downs where she practised labour and administrative law representing employers in a wide range of matters. She has been a regular lecturer with the Human Resources Managers Association and has contributed articles for publication with the Continuing Legal Education Society of British Columbia. Ms. Kearney was appointed as a Vice Chair on December 14, 1998.

CATHERINE McCREARY, *Vice Chair*

Catherine McCreary received her LL.B. from the University of Calgary in 1983. From 1984 to 1997 she practiced labour law in Calgary with the firm of McGown Johnson acting mainly for unions and employees. In 1996 she was elected to the Board of Directors of First Calgary Savings and Credit Union. In 1997 Ms. McCreary moved to Vancouver where she accepted the position of in-house counsel to Teamsters Local 213. In 1999 she was elected to the Board of Directors of VanCity Savings and Credit Union. On October 11, 2000 Ms. McCreary was appointed a Vice Chair of the Labour Relations Board.

GREG MULLALY, *Vice Chair*

Greg Mullaly took degrees in philosophy at Dalhousie University (B.A. (Hons.), 1975) and the University of Oxford (B. Phil., 1978) before returning to Dalhousie University to study law. He received an LL.B. in 1981 and then practiced labour law for nineteen years, most recently at Victory Square Law Office. Mr. Mullaly was appointed to the Labour Relations Board in June, 2000.

JAN O'BRIEN, *Vice Chair*

Ms. O'Brien was a Member of the Labour Relations Board for nine years before her appointment as Vice Chair in June 2000. She was co-ordinator of the Capilano College Labour Students Program for two years. She is past President of Local 115-M of the Communications, Energy and Paperworkers' Union and was Administrative Officer of its predecessor, the Vancouver Newspaper Guild. During her 10 years with the union, Ms. O'Brien headed several sets of collective bargaining and led organizing drives. She was a Vice-President of the B.C. Federation of Labour, where she chaired the Women's Rights Committee. She is a former newspaper reporter and a graduate of the University of British Columbia. Ms. O'Brien attended the Harvard University Trade Union Program and is currently working on her MBA at Simon Fraser University.

LAURA PARKINSON, *Vice Chair*

Laura Parkinson received her LL.B. from the University of British Columbia in 1983 and her LL.M. in Labour Law and Constitutional Law from Queen's University in 1986. Ms. Parkinson served as a Staff Lawyer with the Labour Relations Board in 1986 and 1987. She then returned to the law firm of Baigent, Jackson, Blair where she had previously practised, and remained with that firm and its successor, Victory Square Law Office, until her appointment as a Vice Chair on August 1, 1995.

VLADIMIR (WALTER) PYLYPCHUK, *Vice Chair*

Walter Pylypchuk received his law degree from the University of Western Ontario and was called to the Bar of Ontario in 1978 and the Bar of British Columbia in 1991. He was in private practice from 1978-80, and then joined the Federal Department of Justice for two years during which time he was seconded to Canada Post Corporation. From 1983 to 1989 Mr. Pylypchuk practised as in-house counsel for Canada Post. He served as a Vice Chair of the Industrial Relations Council from 1989 to 1992. After his term with the Council he joined Swinton and Company where he represented employers, associations and trade unions, until his appointment as a Vice Chair of the Labour Relations Board on August 1, 1995.

KEN SAUNDERS, *Vice Chair*

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Law degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996 he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October, 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000 Mr. Saunders was appointed a Vice Chair of the Labour Relations Board.

LISA SOUTHERN, *Vice Chair*

Southern received her law degree from Osgoode Hall Law School at York University in 1996. She was called to the British Columbia Bar Association in 1997, specializing in labour, employment and human rights issues. As a labour relations advisor at Forest Industrial Relations Inc., Southern provided employment, labour relations and human rights advice for the forest industry umbrella organization, established to administer and bargain the collective agreement governing member companies and 14,000 employees certified with IWA-Canada.

GORD VAN DYCK, *Vice Chair*

Gord Van Dyck was appointed to the Board as Vice Chair on January 1, 1998. Mr. Van Dyck's background is comprised of almost equal measures of public sector, private sector, union and management experience. He was the Director of Labour Relations for the Workers' Compensation Board of B.C. from 1993 to 1998 and the Assistant Business Manager with Local 213 of the International Brotherhood of Electrical Workers responsible for adjudicative services from 1980 to 1993. His earlier experience includes seven years as the General Manager of Bowmac Transport Ltd., a 1992 appointment to the Labour Relations Board and four years as a part-time Commissioner with the Public Service Commission of B.C.

BOARD MEMBERS

DON ADAMS, *Employer Representative*

Adams has a master's degree in industrial and labour relations from the University of Oregon. He has written various publications on human resource issues and organizational change. Adams is the president of D. Adams Management Services Ltd., consulting primarily to smaller-to-medium size businesses and not-for-profit organizations concerning labour relations, human resources, organization development and performance management. He is a member of the Vancouver Board of Trade and Coalition of B.C. Businesses.

PAULA BODDIE, *Employer Representative*

Paula Boddie has worked in the human resources/labour relations field for over 15 years. She has held senior management positions in the federal and provincial sectors, most recently as Vice President of Human Resources at B.C. Transit. Ms. Boddie held a similar position at the Vancouver Port Corporation and at the Vancouver Stock Exchange. Ms. Boddie has extensive experience in labour relations, human resources, and with employment equity and human rights matters and legislation. Currently, Ms. Boddie is a practising consultant in the broad human resources field.

DENISE BUCHANAN, *Employer Representative*

Denise Buchanan presently leads the Human Resources department of White Spot Limited as Director of Human Resources. She is involved in labour and employee relations, training, health

and safety, and compensation issues for over 3000 employees. Under her leadership, White Spot Limited was awarded the Quality of Council of BC's Award of Distinction of People Practices in 1999. Her experience includes working with union and non-union, corporate and franchisee environments. She has been involved in many rounds of labour negotiations both as chief spokesperson and as a committee member, and has participated in grievances, hearings and arbitrations on a wide spectrum of issues. Her prior experience includes over 10 years in Operations and Multi-Unit Management, providing her with a solid business management background to complement her human resources expertise.

PAULA BUTLER, *Employer Representative*

Paula Butler is presently working as a sole practitioner. Her practice includes mediation/arbitration services, and harassment and other investigation services to both public and private sector clients. She also provides legal advice to employers on a variety of labour and employment law issues, and is the Manager of Labour Relations at MDS Metro Laboratory Services. Prior to that, Paula worked for the Community Society Services Employers' Association of B.C. as the Acting Director/Team Coordinator of Human Resources/Labour Relations Services. Paula is a graduate of the University of Victoria with a Bachelor of Law degree.

GEOFFREY HOWES, *Employer Representative*

Geoffrey Howes has 35 years of experience in the restaurant and hospitality industry. He has worked in virtually all aspects of the industry, from waiter to chef to owner. As Director of Operations for Toseki Entertainment Ltd. he is responsible for the day-to-day operation of three fine dining restaurants - Salmon House on the Hill, Aqua Riva and Horizons. He also has considerable experience in labour policy issues, as an executive member of the Coalition of B.C. Businesses and as the Vice-President of Government Affairs for the B.C. Restaurant & Food Services Association.

TAJ KASSAM, *Employer Representative*

Kassam has a degree in hotel management from the University of Strathclyde, Scotland. He is currently the president and chief operating officer of Sandman Hotels, Inns and Suites of Vancouver. He is a director of the British Columbia and Yukon Hotel Association, member of the Hotel Catering and Institutional Management Association and an advisory committee member of the Hotel and Restaurant Management Program at Douglas College.

PETER KULYK, *Employer Representative*

A director of the B.C. Auto Dealers' Association, Kulyk is the president and general manager of Ensign Chrysler in Victoria. Kulyk has nearly 30 years in the automobile industry, working in all areas of the business, owning and managing dealerships for the last 13 years in B.C. and

previously in Alberta, Saskatchewan and Manitoba. He has been involved in collective agreements with the machinists union, gaining experience in negotiating and resolving differences.

MARK LEFFLER, *Employer Representative*

Mark Leffler is Manager, Human Resources and Labour Relations for the Greater Vancouver Regional District. In that capacity he is responsible for collective bargaining on behalf of 16 municipalities and the Regional District in a voluntary bargaining association. His department negotiates some 60 collective agreements covering more than 13,000 employees, including inside/outside employees, police, firefighters, nurses, museum and public library staff. The department also provides job evaluation, workers' compensation and employment equity services throughout the Region. Mr. Leffler is a graduate of the University of British Columbia and, prior to joining the GVRD in early 1986, held a variety of labour relations and human resource management positions with Ontario Hydro, Liquid Carbonic Canada Ltd. and B.C. Hydro.

KATHY SANDERSON, *Employer Representative*

Kathy Sanderson previously served the small business community of B.C. as the Chair of the Coalition of B.C. Businesses and as Director of Provincial Affairs for the Canadian Federation of Independent Business. Currently, Ms. Sanderson works as a consultant and in addition to serving on the Labour Relations Board also sits as a member of the B.C. Labour Force Development Board.

JOHN BOWMAN, *Employee Representative*

Bowman handles representation for the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) before the B.C. and Alberta labour relations boards, as well as the Canadian Industrial Relations Board. He has been involved in organizing more than 10,000 members into the CAW and before that, the Canadian Association of Industrial Mechanical and Allied Workers Union.

NEIL BRADBURY, *Employee Representative*

Neil Bradbury is a National Representative for the Canadian Union of Public Employees. Mr. Bradbury has been a member of the Board of Directors of the Medical Services Association since 1985, serving as Vice Chairman since 1989 as well as Chairman in 1993 and 1994. He is a past member of the Workers' Compensation Boards of Review and has held positions on the executives of CUPE Local 498, CUPE's Fraser Valley District Council, and the CUPE B.C. Executive Board. He has instructed courses for the Canadian Labour Congress, the B.C. Federation of Labour and CUPE's six-level program. He regularly represents employees and locals before tribunals.

RAJ CHOUHAN, *Employee Representative*

Raj Chouhan was appointed to the position of Board Member in august 1994. He was reappointed in November, 2000. He has many years of diversified experience in labour relations and administration. Since 1986 Mr. Chouhan has been working with the Hospital Employees' Union. He is currently Director of Organizing and Bargaining. He has held various positions including advisor to the Workers' Compensation Board Sub-Committee which was set up to draft health and safety regulations for the agricultural industry, founding member of the B.C. Organization to Fight Racism, and President of the Canadian Farmworkers' Union.

DIANE MACDONALD, *Employee Representative*

MacDonald received her Bachelor of Arts degree from Simon Fraser University in 1986, a law degree from Dalhousie in 1991, and her Ph.D. from Northeastern University in 1998. She is a labour lawyer for the B.C. Teachers' Federation. MacDonald is responsible for arbitrations, mediations, and Labour Relations Board hearings. She has been involved in submissions to the Human Rights Commission and provided policy advice to provincial and federal task forces on labour law reform.

GAIL MARTIN, *Employee Representative*

Gail Martin has worked for B.C. Telephone since 1967. For most of that time she has been involved with the Telecommunications Workers' Union as a Local Executive member. She has served on several joint committees with company representatives including contracting out and technological change, work jurisdiction and job sharing. Since 1995 she has worked full-time for the TWU. She is also active in her community. In 1990 she was a candidate for Councillor in Delta, currently serves on the Delta Police Board, and is an executive member of the Canadian Association of Police Boards. She is married with two adult children.

NEIL ROOS, *Employee Representative*

Roos has been involved in the labour relations community in B.C. for almost 35 years. In that time, he has led the Christian Labour Association of Canada from a small union presence to that of some 8,000 members. Roos has represented CLAC interests at the Labour Relations Board and is familiar with jurisprudence as well as board protocol. As well, he has taken courses in labour law and labour relations via the Continuing Legal Education Society of B.C.

MAUREEN SHAW, *Employee Representative*

Maureen Shaw has been President of the College Institute Educators' Association of B.C. (CIEA) for 3 years and Secretary Treasurer for the previous 3. She has also been a member of the Executive Council of the B.C. Federation of Labour and the BCFL Education Committee. An English instructor at Kwantlen University-College, Maureen has also been active at the local level, serving as Chief Steward, Chief Bargainer and Local President.

COLIN SNELL, *Employee Representative*

Colin Snell is the former President and Secretary Treasurer of the British Columbia Provincial Council of Carpenters. Prior to his election in 1985 to the Provincial Council, he was Business Agent of Carpenters' Vancouver Local Union 452 for 15 years. Mr. Snell has held Executive Council positions with the P.C. Federation of Labour, the B.C. and Yukon Territory Building and Construction Trades Council and the Vancouver and District Labour Council.

DAVID VIPOND, *Employee Representative*

David Vipond has been employed with the BCGEU for 21 years. He has worked in the Kootenays, Okanagan and Lower Mainland Area Offices as a Regional Coordinator. He is currently Chief Negotiator for the Master Agreement with the Province of British Columbia. He is also responsible for membership grievance appeals and is a Trustee for the Public Service Pension Plan. He was a National Industrial Officer in Australia with the Community and Public Sector Union where he was responsible for the federal Attorney General's Department, including all related agencies, boards, commissions and courts. He has previously served as Chair of the Board for Surrey Memorial Hospital and as a member of the Business Task Force.

MEDIATORS

As of December 31, 2003, the Board's Mediation Division consisted of the following Mediators:

DEBBIE CAMERON, *Mediator*

Debbie Cameron graduated from the Cariboo College Nursing program in 1976 and worked as a registered nurse for the next four years. In 1981 she was employed by the B.C. Nurses' Union, initially as a Labour Relations Officer, then as Negotiations Officer and in 1992 became the Co-ordinator of Hospitals and Organizing. As Hospitals Co-ordinator she was responsible for negotiations and contract administration of all hospital sector collective agreements, covering more than 17,000 employees. Debbie joined the Board as a mediator in 1994.

GRANT McARTHUR, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Mr. McArthur joined B.C. Rail in 1986 where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

STEPHEN RINFRET, *Mediator*

Stephen Rinfret has worked in both labour relations and human resources in B.C. for over 20 years. Immediately prior to joining the Board, he was Director of Labour Relations Services for the Continuing Care Employee Relations Association (now HEABC). During this time, Mr.

Rinfret also taught an undergraduate course in collective bargaining at Simon Fraser University, and a similar course at the British Columbia Institute of Technology. He holds a Bachelor of Science degree from the University of Montreal (Loyola College) and a Masters degree in Business Administration from Simon Fraser University. Stephen has been with the Board as a mediator since 1994.

III. HIGHLIGHTS OF BOARD DECISIONS

In 2003 the Adjudication Division published 446 numbered decisions. The following are summaries of some of the more noteworthy decisions issued during the year. These summaries are provided for general information only and should not be viewed as a ruling by the Board or an official interpretation of the *Labour Relations Code*. The full text of these and other Board decisions are available on its website (www.lrb.bc.ca), or can be obtained from Canada Law Book (Official Publisher) (Toll free phone number: 1-800-263-2037), the Vancouver Public Library, or the Vancouver Court House Library. Electronic access is available through Quicklaw (Phone Number) (604) 684-1462.

Common Ground Publishing Corp., BCLRB No. B1/2003 — CEP, Local 2000 applied for certification and also complained that the Employer had committed unfair labour practices by terminating the employment of three of its seven employees after the certification application was filed.

The Panel found the Employer's actions were motivated by anti-union animus. It held that decimating the bargaining unit driven by anti-union animus was an egregious act that warranted remedial certification. It also observed, however, that in bargaining for a first collective agreement, the Employer's difficult financial situation may well be relevant to the parties' duties in light of the amended Section 2 of the Code. *Held:* Union's unfair labour practice complaints upheld; remedial certification ordered.

Dan Atkinson and Rob White, BCLRB No. B6/2003 (Leave for Reconsideration of BCLRB No. B202/2002) — The Complainants applied for reconsideration of the dismissal of their Section 12 complaint against CLAC. The Complainants were transferred to CLAC's bargaining unit with Northwest Waste Systems in a successorship. Their complaint concerned CLAC's decision to "endtail" their seniority, based on a vote of the employees in the bargaining unit. As a result of the endtailing decision, the Complainants lost all their seniority for purposes of layoff and bidding on work. After a series of Board decisions and judicial review, a reconsideration panel had referred the matter to the original panel, which found no breach of Section 12 and dismissed the complaint. The Complainants applied for reconsideration of that decision.

The Reconsideration Panel began with the question of whether the vote held by CLAC justified disregarding the principles governing employee rights under the Code's successorship provisions (in particular, the presumption in favour of dovetailing seniority). It held that CLAC's "majority rule" argument was not a complete defence to the Section 12 complaint. The duty of fair representation is not an obligation merely to represent the will of the majority; rather, it is an obligation designed to prevent the tyranny of the majority. The Reconsideration Panel also held the original panel erred in considering the Complainants as "new" employees despite the acknowledged successorship. *Held:* Leave and reconsideration granted; original decision set aside and complaint referred to new panel.

Pirelli Cables & Systems Inc./Cables et Systemes Pirelli Inc., BCLRB No. B57/2003 (Leave for Reconsideration of BCLRB No. B256/2002) — An arbitrator enunciated a "general rule", subject to limited exceptions, that oral and written communications between the parties during the grievance procedure are privileged and therefore not admissible in the arbitration hearing. The issue raised in this reconsideration application was whether the original panel erred in endorsing this general rule under Section 99 of the Code.

The Board's established policy for review of arbitration awards under Section 99 distinguishes "law of the statute" matters, reviewable on a standard of correctness, from "law of the contract" matters, reviewable on a more deferential "genuine effort" standard. The original panel considered the issue of the admissibility at arbitration of statements made during the grievance procedure to be related to the "just and reasonable cause" principle of the Code, and therefore regarded the issue as a "law of the statute" matter. However, the reconsideration panel found the issue does not directly involve the "just and reasonable cause" standard, nor does it rise to the level of a "doctrinal approach" related to just and reasonable cause. Rather, it is an issue of the "law of the contract" and therefore one in respect to which the Board will give deference to the views of arbitrators. The reconsideration panel therefore found the issue is properly a matter for the "common law" of arbitration and should be dealt with through the evolution of arbitral jurisprudence. Accordingly, arbitrators are not bound by the original panel's analysis of the issue. *Held:* Leave for reconsideration granted; original decision set aside.

Convergys Customer Management Canada Inc., BCLRB No. B62/2003 (upheld on reconsideration, BCLRB No. B111/2003) — BCGEU complained the Employer committed unfair labour practices that impacted its organizing campaign. The Employer relied on the amended language of Sections 2, 6 and 8 to argue that its communications were not contrary to the Code. The Employer had issued written bulletins in response to union leaflets and in response to information it received from employees. The union also complained of the presence of security guards by the employee entrance.

The original panel found that the Code contemplates an employer's right to express its views in coexistence with employees' freedom of association, having regard for the economic dependence and resulting vulnerability of employees. The amendments to Sections 2, 6 and 9 adjust the weight attributed to these rights within this legislative scheme. The expression of non-coercive, non-intimidating views based on the preference to resist certification is prima facie protected by Section 8 and does not constitute interference for the purposes of Section 6(1). Except in the case of a deliberate lie, it is not the Board's role to police the accuracy or reasonableness of such views.

In the present case, the Board found that an important feature about the context of the Employer's communications was that the BCGEU invited and participated in a public debate with the Employer. While the Employer expressed views that were critical of the union, taken in context, the comments were not coercive or intimidating. The Employer may also have expressed views that were mistaken, inaccurate or unreasonable. However, absent coercion or intimidation, genuinely held views, including opinions that are not reasonable and views that are mistaken or critical of others, are protected by Section 8.

With one exception, the views expressed by the Employer were found to be not intimidating or coercive and therefore protected by Section 8. The exception was the Employer's threat to dismiss any employee who violated an employer policy prohibiting the disclosure of employee information to third parties by disclosing employee contact information to the BCGEU.

With respect to the presence of security guards, the panel found that the Employer's surveillance of employees' interaction with organizers would cause a reasonable employee to feel intimidated. This intimidation had the reasonable effect of inducing employees to refrain from interacting with organizers and become a member of the Union and therefore constituted an unfair labour practice. By way of remedy, the panel ordered, among other things, that the employees be given an opportunity to speak to organizers without Employer surveillance and without the threat of dismissal for disclosing any contact information. *Held:* Unfair labour practices complaints allowed in part.

James W.D. Judd, BCLRB No. B63/2003 — Judd complained the Union breached its duty of fair representation by refusing to take to arbitration a grievance regarding his dismissal from employment with the Employer. The panel took the opportunity to address the rights, obligations and processes under Sections 12 and 13 of the Code.

Section 12 is not an avenue of "appeal" of the merits of union decisions. Rather it is designed to ensure the union exercises its judgment and acts based on proper considerations. If it does, it has done what it is required to do by Section 12 and the Board has no jurisdiction to overturn or change the union's decision.

In general, Section 12 requires a union to:

1. talk to the grievor and learn what the grievor is complaining of;
2. investigate, for example:
    - obtain information from those involved;
    - construct a sequence of events from the information obtained; and
    - offer the grievor a chance to respond.
3. make a reasoned decision, for example:
    - consider the collective agreement language (and potentially the practice in the industry or the workplace);
    - take into account how similar grievances have been handled in the past; and
    - provide to the grievor the reasons for the union's decision; and
4. proceed with the grievance (if a decision is made to do so) in a manner which is not in blatant or reckless disregard of the grievor's interests (all the while remembering that the union must represent the bargaining unit as a whole, not simply the interests of the grievor.)

While these are the general or most usual requirements, the actual requirements in a particular matter will depend on the facts in that case.

Spacan Manufacturing, BCLRB No. B75/2003 (Leave for Reconsideration of BCLRB No. B203/2002) – The issue in this case was whether the Board's four community of interest factors for determining bargaining unit appropriateness (the "*IML* factors") were relevant considerations in an application for craft certification under Section 21 of the Code in the construction industry.

Ironworkers, Local 97 applied under Section 21 to be certified for a bargaining unit conforming to its traditional craft unit description. The original panel found that some of the employees in the proposed bargaining unit worked not only "in the field" (ironwork) but also "in the shop" (fabrication). The original panel held that this evidence of overlapping work constituted "functional integration" in *IML* terms, but that this was not relevant to the determination of craft union

appropriateness. The reconsideration panel found this conclusion to be in error. A Section 21 application for a standard craft unit by a union pertaining to that craft and covering employees engaged in the core functions of that craft is presumptively appropriate. However, a standard craft unit will not be found to be appropriate where a rational and defensible line cannot be drawn around the proposed unit as a result of the overlap of work between the shop and the field. Here, the functional integration between the shop and field employees meant that a rational and defensible line could not be drawn around the bargaining unit, and therefore it was not appropriate. *Held:* Spacan's application for reconsideration allowed; Union's certification application dismissed.

RMH Teleservices International Inc., BCLRB No. B77/2003 (Leave for Reconsideration of BCLRB No. B30/2003) — BCGEU applied for reconsideration of several interlocutory and interim rulings by an original panel, in particular an order that the union disclose the number and timing of membership cards signed during the three months prior to the hearing.

The reconsideration panel noted that Section 124 of the Code generally prohibits the disclosure of information which may reveal whether or not a person is a member of a trade union. Such information is treated as confidential and will not be revealed absent compelling reasons. However, Section 126 of the Code codifies the right to a fair hearing and procedural fairness, which must be balanced against confidentiality considerations. In this case, the issue was whether the union was "in the process of conducting a certification campaign" for purposes of Section 6(3)(b). The information sought was relevant to this issue and, but for the confidentiality issue, the employer would be entitled to attempt to advance its position through cross-examination on those matters.

The reconsideration panel held that determinations regarding whether certain information relating to membership in a union should be disclosed will be made having regard to the specific circumstances of each case. Where, as here, an employer seeks to probe into relevant information contained on a membership card, the Board must be persuaded it will not result in a person being identified as a union member. The original panel was not persuaded that, on the facts of this case, confidential information would be disclosed if the Employer were permitted to ask questions relating to the number and timing of membership cards. The reconsideration panel found no error in that conclusion. It added that the original panel would be able, at any time in the remainder of the proceeding, to stop or prevent questions which it concludes might disclose confidential information. *Held:* Application for reconsideration of interim rulings dismissed.

City of Castlegar, BCLRB No. B81/2003 — The employer applied for review of an arbitration award alleging, inter alia, that it was denied a fair hearing because it was not given an opportunity to adduce evidence or make submissions on a determinative issue. The arbitrator based his conclusion on the doctrine of promissory estoppel.

The panel found that arbitrators may re-characterize the issues in dispute provided the parties are given a fair opportunity to make submissions and adduce relevant evidence. In the arbitration the Union did not argue estoppel and the employer did not make any submissions regarding estoppel. The panel found that the employer was denied a fair hearing because it was not given the opportunity to adduce evidence and make submissions about the application of the doctrine of estoppel before it was used to determine the grievance. *Held:* Matter remitted back to the arbitrator to decide the grievance and complete a reasoned analysis on the basis of the appropriate test.

Health Employers Association of British Columbia (representing Providence Health Care – Youville Residence), BCLRB No. B84/2003 (Leave for Reconsideration of BCLRB No. B108/2002) — The NBA applied for reconsideration of a Section 99 decision setting aside an arbitration award and remitting it back to the arbitrator with directions. The NBA argued that the original panel contravened the Board's principle of deferring to arbitrators when supervising and reviewing arbitration awards involving collective agreement interpretation.

The Board's role with respect to issues involving the use of extrinsic evidence by an arbitrator in his or her interpretation and application of a collective agreement provision is to ensure that the extrinsic evidence has been taken into consideration in the appropriate circumstances. The Board's role is not to stand in the shoes of the arbitrator and re-assess the weight to be attached to extrinsic evidence. The panel found the arbitrator's reasons for discounting the weight to be given to the extrinsic evidence were evident on the face of the award and therefore, it could not be said that the award lacked a reasoned analysis on the issue. The panel noted while the original panel did not find the arbitrator's analysis persuasive and would have reached a different conclusion on the issue of the weight to be attached to the extrinsic evidence, that is a matter beyond the scope of a Section 99 review. *Held:* Leave and reconsideration granted; original decision set aside.

Vogue Theatre Inc., BCLRB No. B89/2003 — The Vogue applied for leave and reconsideration of an original decision to uphold a collective agreement entered into by its general manager, without the authority to do so and without the knowledge of the Vogue. The Vogue argued the Board should not uphold the validity of a collective agreement where the Union traded off bargaining rights for a certified bargaining unit to obtain a voluntary recognition and collective agreement for a different unit.

The reconsideration panel applied the principle of contract law that provides where the contract is lawful on its face and one party does not know the other intends to apply the otherwise lawful contract to an improper purpose, the contract may be enforced by the innocent party. The original panel found that the collective agreement was not, on its face, an unusual or unlawful agreement. There was nothing in the findings of fact of the original panel to suggest that the Union was privy to the intention of the general manager to defraud the Vogue or which should have caused the Union to question his authority. The remedy for the Vogue against its manager is under the common law of agency. The Board does not have jurisdiction regarding that issue and a remedy must be pursued elsewhere.

The Vogue argued that the Union did not come before the Board with clean hands, because the Union had breached its duty of fair representation to the front of house employees under Section 12 by trading away their rights for a collective agreement covering technical staff. While the Board agreed with this statement, the Board found that the Local did not breach any obligations to the Vogue or the technical employees covered by the collective agreement; therefore, it would not be appropriate to displace the collective agreement. *Held:* Reconsideration denied.

Health Employers Association of British Columbia on behalf of its members, including Fraser Health Authority, BCLRB No. B93/2003 — HEABC applied under Part 5 of the Code alleging that the Union and its members were engaged in illegal picketing and an illegal strike. The Union asserted that the activity in question was a political protest. The union served notice that it intends to challenge the constitutionality of the Code definitions of "strike" and "picketing". The hearing proceeded on an interim basis under the existing legislation.

When a party raises a Charter argument in an expedited hearing under Part 5 of the Code, it

will be difficult for the parties to assemble the evidentiary basis for a Charter argument in the short time generally available for a Part 5 hearing. Following an adjournment to allow proper notice under the Constitutional Question Act, an original panel will then determine the Charter issue. In the meantime, the expedited application will be addressed, and, if necessary, an interim order issued.

The panel found that the union and its members were engaged in picketing and a strike that was unlawful under the existing provisions of Sections 57 and 67 of the Code. The panel declined to grant a declaration to this effect because of the pending constitutional challenge to the definitions of "picketing" and "strike". However, the panel was satisfied that there was a strong labour relations policy rationale for granting an interim order and it represented an appropriate balancing of interests in the circumstances – the risk to the public interest is substantial if employees were to take action that disrupted patient care. No equivalent prejudice was identified if the union's constitutional argument is successful. The panel also noted that as a matter of policy, the Board does not issue declarations in interim orders. *Held:* Interim order issued; no declaration.

Convergys Customer Management Canada Inc., BCLRB No. B111/2003 (Leave for Reconsideration of BCLRB No. B62/2003) — The Employer applied for reconsideration of the original decision in which the original panel found that the Employer had committed a number of unfair labour practices that breached Sections 6(1), 6(3) and 9 of the Code. The original panel ordered a number of remedies for those breaches, one of which required the Employer to schedule 30-minute paid staff meetings at the worksite for the purpose of giving the Union access to all its employees. The Employer challenged this remedy and also argued that the original panel erred in considering the Employer's openly stated opposition to the Union, which was found to be lawful under Section 8, as a factor in its determination. The Employer said that this error coloured or impacted the original panel's analysis and resulted in the rendering of an inappropriate remedy.

The reconsideration panel found that the new Section 8 of the Code does not override the Board's longstanding policy of looking at all the circumstances in the case when determining whether an unfair labour practice has occurred. Those circumstances include the employer's knowledge of the union's presence or its organizing campaign and the employer's response, whether lawful or unlawful. With respect to the remedy, the reconsideration panel found that an access order is not an extraordinary or unusual remedial response and can be an appropriate remedy in cases that involve allegations of coercion and intimidation. The reconsideration panel also noted that the amendments to Sections 6(1) and 8 mean that many matters that were previously proscribed are now permitted. The remaining proscriptions relate to matters of a more serious nature (i.e. coercion and intimidation) and the Board's remedial responses must reflect that change. *Held:* The Employer's application for leave and reconsideration was dismissed.

Certain Employees of Minolta Business Equipment (Canada) Ltd./ Equipement de Commerce Minolta (Canada), Ltee., BCLRB No. B116/2003 — The Union applied to dismiss the partial decertification application of certain employees and to have the Board impose a 10-month time bar against further partial decertification applications. This was the Certain Employees' second application for a partial decertification. The Union also challenged certain ballots.

The Union argued that in the absence of any change in circumstances showing why the initial and recent certification vote did not properly reflect the true wishes of the majority of employees in the bargaining unit, the application should be dismissed and a 10-month time bar should be imposed against further partial decertification applications so

that the parties will not be distracted from their collective bargaining obligations. If the application is not dismissed and the results of the vote show support for union representation, the Union argues that a 10-month time bar should be imposed on future applications.

The panel found that the timing of repeated partial decertification applications is a matter that the Board may consider when deciding whether to allow such applications to go ahead. The granting of a partial decertification application is a discretionary exercise. The Board recognizes that a partial decertification is a limited rather than a routine solution to problems in the bargaining unit. There may be circumstances where there are valid labour relations reasons for not entertaining repeated partial decertification applications. In the circumstances of this case, the panel did not find there were facts to justify dismissing the second partial decertification application. The panel noted that although the second application followed quickly after the counting of a vote in favour of continued union representation, there was a six-month gap between the two applications. The panel noted that if a third decertification application were to follow within a short time of the counting of a second representation vote favouring continued union representation, it might reach a different conclusion about allowing the application to proceed. *Held:* The Union's application was dismissed.

Nanaimo Foundry and Engineering Works Ltd., BCLRB No. B152/2003 — Local 97 applied under Section 139 of the Code for a declaration that a collective agreement was in force between itself and the Employer based on a letter of understanding signed in 1995.

The panel noted that in determining whether a collective agreement is in force, the Board will consider a number of circumstances including the nature of the industry, the exact terms of the agreement, the wishes of the employees, the circumstances surrounding the execution of the collective agreement, the conduct and intentions of the parties at the time of the execution, the conduct of the parties since execution of the collective agreement, the context in which the document is being challenged, whether the union has abandoned its administration of the collective agreement, the parties appreciation of the nature of the commitment made by the collective agreement, and misconduct by either party. The panel also noted that a union is not required to exercise a high degree of supervision to ensure that an employer abides by the collective agreement.

The panel found that a collective agreement had been entered into, however, Local 97 had not exercised reasonable diligence and vigilance to enforce the collective agreement. For example, for five years Local 97 failed to pursue a grievance, file a complaint with the Board, or follow up in any other manner with the Employer when it became aware that the Employer was engaged in fieldwork in a pulp mill. By the time a grievance was filed in 2000 (5 years after signing the letter of understanding), the Employer had developed a collective bargaining relationship with the IWA. The panel found the Employer and Local 97's conduct over the five-year period was not consistent with the intention to be bound by a collective agreement. *Held:* Local 97's application was dismissed.

Wal-Mart Canada Corp./La Compagnie Wal-Mart du Canada, BCLRB No. B156/2003 — UFCW Local 1518 complained to the Board that Wal-Mart breached Sections 6(1), 6(3)(d) and 9 of the Code by committing unfair labour practices including interfering with the formation and administration of a trade union, making and permitting to be made false and derogatory statements about Local 1518 and its organizer, threatening RCMP involvement against individuals supporting Local 1518, being involved in RCMP investigation of its organizer, permitting individuals to communicate to employees that layoffs could occur because of unionization, promoting anti-union organizing and permitting employees to campaign against Local 1518 on company time at the worksite.

While the panel found that Wal-Mart did not breach Sections 6(3)(d) and 9 of the Code, the panel found that Wal-Mart did commit an unfair labour practice prohibited by Section 6(1). Wal-Mart was found to have the formation of a trade union by attacking and facilitating others to attack the character and reputation of Local 1518's organizer. The panel said that Wal-Mart was free to exercise its right to dismiss any person on reasonable notice. Wal-Mart was in no position to complain when its resort to that right for the purpose of solving 'people problems' formed a part of the union's campaign to convince employees of the benefits and protections of the 'just cause' provision under the Code.

The panel ordered Wal-Mart to read the summary of the decision to employees in a meeting without comment and without discussion. The panel further ordered Wal-Mart to permit Local 1518 to address employees and answer any questions for a period of 30 minutes following the reading of the summary in order to give employees an opportunity to focus their minds on the real issues engaged by the question of unionization free from any considerations fabricated about the character of the union's organizer. *Held:* No breach of Sections 6(3)(d) and 9 of the Code was found. A breach of Section 6(1) of the Code was found.

Health Employers Association of British Columbia on behalf of Kootenay Lake Regional Hospital, BCLRB No. B161/2003 (upheld on reconsideration, BCLRB No. B14/2004) — HEABC applied for review of an arbitration award under Section 99 of the Code. The NBA had grieved that nurses who are on call and are required to perform services by telephone are entitled to a minimum two-hour callback pay, pursuant to the callback provision in the parties' collective agreement. HEABC had argued that a nurse must work at least 15 minutes before the entitlement to the two-hour minimum payment arises. The arbitrator found in favour of the NBA. HEABC submitted that the award was inconsistent with the principles expressed or implied in the Code because the arbitrator failed to follow and apply a previous award on the same issue between the parties.

The panel found that the arbitrator was entitled to consider material not placed before another arbitrator who dealt with the same issue between the parties. Moreover, as an industry arbitrator, the arbitrator was entitled to take a broader perspective and consider a broad range of circumstances in coming to his determination. The panel also found that the arbitrator was entitled to draw inferences from the language in previous collective agreements without hearing evidence of negotiating history. The panel found that HEABC had the opportunity to present negotiating history to the arbitrator, but chose not to and therefore must live with the consequences of that choice. *Held:* HEABC's application was dismissed.

Excell Agent Services Canada Co., BCLRB No. B171/2003 — The Union complained that the Employer interfered with the selection and formation of a trade union contrary to Section 6(1) of the Code through a series of bulletins distributed to employees during the Union's organizing campaign. The Employer argued that the communications did not offend Section 6 because they were protected by Section 8.

The panel concluded that some acts involving speech may be protected by Section 8, but some speech acts may be prohibited if they are not expressions of views and they are otherwise wrongful under the unfair labour practice provisions. The panel found that actions taken to influence an outcome by inciting others to act are not the same as expressing views. The panel found that the language in Section 8 referring to "his or her views" extends the immunity to expression of one's own views and not to facilitating or formulating the speech of others. If views, by definition, are one's own beliefs, the panel stated they do not think that formulating questions for others is covered by Section 8 immunity. By the express language of Section

8, the freedom is limited to the person who expresses the view.

In this case, the panel concluded that the bulletins did not amount to expression of views and therefore were not covered by the Section 8 immunity. The panel also found that due to the exceptional climate in which the bulletins were circulated the bulletins did not have the effect of interference under Section 6(1). The panel did not find any threatening aspect to the bulletins: they were written materials rather than captive audience or private meetings; their tone was moderate when compared to some of the material circulated by Union supporters and its opponents; and the source of the bulletins was obvious.

The panel also noted that the preferable approach is for an employer to preface its comments with qualifying statements clearly indicating the comments are their own beliefs or opinions. Had the employer done this in this case, there would likely have been no cause for complaint, as long as they had not been coercive or intimidating. *Held:* The Employer's bulletins were not an expression of views for the purposes of Section 8, however, in the circumstances of this case, the bulletins would not have the effect of interference on a reasonable employee in the workplace.

Vancouver Police Board, BCLRB No. B182/2003 (Leave for Reconsideration of Decisions dated February 19, 2003 and March 24, 2003) — E-Comm applied for leave and reconsideration of certain procedural rulings made by the original panel that arose in the context of an application under Section 35 of the Code. E-Comm argued that the rulings denied it the right to a fair hearing and were inconsistent with the statutory duty to provide the parties with a full opportunity to present evidence and make submissions.

The reconsideration panel noted that leave is rarely granted where a party seeks to reconsider a procedural or interlocutory ruling unless the ruling raises a serious question of the Board's jurisdiction or could result in irreparable harm to a party. Routine review of interlocutory decisions could lead to a proliferation of proceedings and increased delay, which would be inconsistent with the "orderly, constructive and expeditious settlement of disputes" as required under Section 2(e) of the Code. The reconsideration panel found that the procedural rulings did not amount to a final ruling on any of the preliminary issues and there was no basis upon which to depart from the Board's general policy against granting leave with respect to interlocutory decisions. *Held:* Leave for reconsideration denied.

Certain Employees of Art Lam Drugs Ltd. (Shoppers Drug Mart No. 220) BCLRB No. B199/2003 (Leave for Reconsideration of BCLRB No. B52/2003) — Local 1518 applied for leave and reconsideration of BCLRB No. B52/2003, in which the original panel dismissed Local 1518's Section 142 application and objection to the Certain Employees' application for decertification. Local 1518 argued that the original panel acted contrary to the principles of procedural fairness and natural justice in dismissing its application, and erred in law in dismissing its Section 142 application because of a failure to meet the prima facie case requirement. Local 1518 further submitted that the original panel erred in law in finding that the Board had no jurisdiction to issue the declaration of a single, multi-employer bargaining unit under Section 142 of the Code.

The reconsideration panel was not persuaded that the original panel erred in law in concluding that the Board does not have jurisdiction to find a single bargaining unit consisting of the employees of multiple employers (absent an employer-side accreditation or a statutorily imposed bargaining structure). With respect to the argument that the original panel's decision to dismiss the Section 142 application on a prima facie basis was a breach of procedural fairness, the reconsideration panel noted that it is settled Board policy that any application may be

subject to the prima facie requirement. While the Board may seek submissions before dismissing for failure to establish a prima facie case, there is no statutory requirement that it do so. Local 1518 also argued that it had a reasonable expectation that its application would not be decided on the prima facie case, but rather on another basis. The reconsideration panel found that there was no express representation by the original panel that it would not dismiss the application on the basis of the prima facie requirement, or that it would seek submissions before dismissing the application on this basis. The reconsideration panel also noted that the Board does not have a consistent past practice of giving notice and seeking submissions before dismissing applications on this basis. The reconsideration panel found that the fact that the parties argued the application on a different basis did not preclude the original panel from turning its mind to the prima facie case issue and deciding the application on that basis. Therefore, given the lack of express representation and the lack of consistent past practice, the reconsideration panel found that Local 1518 could not claim to have had a reasonable expectation that its application would not be dismissed summarily for failure to establish a prima facie case, such that it was procedurally unfair for the original panel to decide the application on that basis. *Held:* The application for reconsideration was denied.

Legislative Assembly, BCLRB No. B202/2003 — BCGEU applied under Section 18 of the Code for certification to represent some employees of the Legislative Assembly of British Columbia. The Legislative Assembly opposed the application based on parliamentary privilege, arguing that BCGEU is not entitled to a certification under the Code. The Government also opposed that application and argued that it, not the Legislative Assembly, is the employer of the employees in the proposed bargaining unit. Certain Employees argued that the Charter right of freedom of association defeated parliamentary privilege raised by the Legislative Assembly and any statutory exclusion raised by the Government.

The panel found that Certain Employees and the BCGEU could not apply for certification under the Code due to parliamentary privilege. Specifically, the panel determined that the ability to regulate internal affairs and the hiring, firing and control of staff is part of a parliamentary privilege necessary to the efficient operation of the Legislative Assembly. As a result, the Legislative Assembly is exempt from the certification process. The panel further found that the Charter did not assist Certain Employees as the Charter cannot be used to override parliamentary privilege and even if the Charter does apply it does not go so far as to protect or guarantee the right to obtain certification under the Code. As a result of this finding, it was not necessary for the panel to decide who the true employer of the subject employees was for labour relations purposes. *Held:* The application for certification brought by the BCGEU was dismissed.

N.W. Art in Motion Inc., BCLRB No. B203/2003 — The Union complained that senior managers and security guards retained by the Employer interfered with the formation of the Union contrary to Section 6(1) of the Code, tried to intimidate employees not to join the Union contrary to Sections 6(3)(d) and 9 of the Code, and attempted to coerce employees not to join the Union contrary to Section 9 of the Code. The Union argued these violations occurred when the Employer stood and observed Union organizers distributing organizing bulletins at the entrances to the Employer's plant. The Employer did not dispute that it engaged in surveillance of the leafleting; however, it submitted that its surveillance was not a violation of Section 6 or 9.

The panel found that on the facts of the case, the presence of the security guards while union organizers were leafleting would have led a reasonable employee not to take a leaflet for

fear the employer would interpret this as an indication of support for the Union. As well, the panel found that the Union had also demonstrated that the surveillance by the Employer's managers and security guards did actually inhibit employees from taking leaflets from Union organizers. The panel also found that the Employer did not provide a compelling or sufficient reason for the surveillance. The panel noted that it did not matter whether the reason given for hiring the security guards was bona fide because an employer's subjective assessment of the risk of unlawful conduct does not determine whether it has the right to monitor the interaction between union organizers and employees.

With respect to remedy, the panel found that it was unable to infer that but for the Employer's unlawful conduct, the Union would have obtained the requisite support for a representation vote or the addresses and phone numbers of the Employer's employees. However, had the Employer not engaged in its unlawful surveillance, all, or almost all, of the employees would have at least taken a Union leaflet. Therefore, to put the Union in the position it would have been in had the Employer not breached the Code, the panel declared that the Employer breached Sections 6(1), 6(3)(d) and 9 of the Code and ordered it to cease and desist doing so. As well, the Board ordered the Employer to provide a mailing label with the employee's name and address on it to the Board. The Union, if it wished, could provide the Board with stamped envelopes with a copy of the decision and, if it wished, a leaflet and a blank membership card, which the Board would mail out to the employees. *Held:* The panel found the Employer violated Sections 6 and 9 of the Code by its surveillance of the Union's leafleters.

Certain Employees of MKA Leasing Ltd. (Discount Car & Truck Rental), BCLRB No. B217/2003 — Certain employees applied under Section 142 of the Code to vary the certified bargaining unit by deleting the Crestwood location.

The panel noted that employees remaining in the unit would be adversely impacted if the application were granted. In particular, the opportunity for employees at other sites to exercise seniority rights to apply for higher paying jobs at Crestwood would be lost if Crestwood were to be removed from the unit. The panel also noted that a significant factor weighing against Certain Employees' application is the practical possibility of decertifying the unit as a whole. While the employees work at geographically separate sites, they are not so far apart as to reasonable infer that it would be practically impossible to organize the decertification of the entire unit. As well, there is considerable interaction between the employees at different sites and the collective agreement provides for a single seniority list. Therefore the panel found that when the employee wishes were weighed against the impact on employees in the unit and the practical possibility of decertifying the unit as a whole was considered, it was not appropriate to delete the Crestwood site from the unit. *Held:* Certain Employees' application was dismissed.

Certain Employees of Starbucks Corporation, BCLRB No. B233/2003 (Leave for Reconsideration of BCLRB No. B123/2003) — Certain Employees applied for leave and reconsideration of BCLRB No. B123/2003, an interim decision that dealt with objections by Certain Employees to questions relating to the payment of their lawyer's fees asked by the Union during the testimony of a representative of Certain Employees at the hearing before the original panel. The reconsideration panel found that the unique and substantive nature of the issue of solicitor-client privilege puts this decision into the exceptional category of interim rulings for which the Board may grant leave for reconsideration. The reconsideration panel also found the Board has the jurisdiction to reconsider the original decision under Section 141 despite the fact the issue of solicitor-client privilege is a matter of "general law".

With respect to the merits of the application, the panel noted that the law in British Columbia is that in order for solicitor-client privilege to be waived, the client must do so deliberately and knowingly and not inadvertently. The panel also found that the words alleged to have been said by the representative of Certain Employees were not in and of themselves a disclosure of solicitor-client confidence, as the words did not disclose the nature and terms of the retainer between Certain Employees and their counsel. Therefore, the issue of whether those words would constitute a waiver of privilege did not arise and the original panel did not err in not considering the law relating to waiver of solicitor-client privilege.

The reconsideration panel found that it was open to the original panel to accept the testimony of the representative of Certain Employees and find that the words alleged to have been said, while not revealing the nature or terms of the retainer, established an objective evidentiary basis for the factual inference that legal fees were being charged. As there was an evidentiary basis for the factual inference drawn by the original panel, it could not be said that the original panel committed a palpable and overriding error.

Finally, the reconsideration panel found, in the context of this dispute, requiring Certain Employees to reveal who is paying their legal fees for a partial decertification application would not constitute a breach of solicitor-client privilege. This is because the questions were being asked to facilitate the determination of an allegation of interference by the Employer in Certain Employees' application for partial decertification. In order to establish employer interference, the Union must do more than merely make a bare allegation that the Employer is paying those fees, it must provide an evidentiary basis for the Board to reach this conclusion. The questions the Union sought to ask did not seek details of the retainer (i.e. the amount of the retainer), but rather to determine who is paying the fees. Therefore, the reconsideration panel found the original panel reached the correct legal conclusion in determining that requiring the representative of Certain Employees to answer the questions and thereby reveal the source of payment of their legal fees did not breach solicitor-client privilege. *Held:* Leave for reconsideration granted. Application for reconsideration denied.

City of Vancouver, BCLRB No. B247/2003 — The City made a preliminary objection to CUPE's application under Section 139 of the Code for a declaration that the City had improperly excluded employees occupying 39 positions from the bargaining unit, arguing that CUPE either agreed or acquiesced to the exclusion of the 39 employees and must therefore organize them before CUPE can vary them into the bargaining unit.

The panel noted that an agreement to diminish the scope of the unit or abandon representational rights may be found in documents or a collective agreement; it may be expressed or implied; or the Board may infer such an agreement from the conduct of the parties. As a consequence, the Board must consider a number of factors in determining the status of excluded positions. The Board must assess not only the parties' words, but also their conduct. Where a union disputes an excluded position, it must advance and prosecute its claim in a reasonable period of time once it has become aware of the nature of the work being performed by the position and that the employer has excluded the position from the bargaining unit. The fact that parties may agree to disagree or complain to one another about inclusions or exclusions is insufficient to establish a claim under the Code. Once a reasonable period of time has passed during which a failure to resolve disputes has manifested itself, a union is obliged to bring an application if it hopes to preserve its rights.

While the Board requires an incumbent to have exercised the duties of a position for at least 90 days before a claim is brought forward for the

Board to determine whether a position is properly excluded from the bargaining unit, the minimum of 90 days does not mean that a claim must be filed on the 91st day. A reasonable period of time beyond the 90 days may not preclude a union from advancing a claim, however, a reasonable period of time to assess a position is measured in months, not years. One can add to that a further reasonable period of time for inter-party exchange of information and positions and for attempts at settlement. On this basis, a reasonable time frame may, depending on circumstances, extend to a year or somewhat more.

The panel found that CUPE was regularly and routinely notified of the creation of various excluded positions, CUPE had the opportunity to make representations about newly created excluded positions to City Council and had done so on several occasions. Despite being aware of excluded positions for extended periods of time, in once case for decades, CUPE elected not to pursue a claim under the Code, but rather engage the City in interminable discussion. With respect to the Systems Analyst positions, the panel found that the evidence showed that CUPE complained in part, not with respect to the exclusion of the System Analyst position, but rather about the number of incumbents who now occupy System Analyst positions. The panel found, if there is an agreement to exclude, either express or implied, or if there has been an abandonment of representational rights in respect of a position, the fact that there may be many incumbents does not give CUPE any greater right or ability to advance a claim. With all of the other positions, the panel upheld the City's preliminary objections, concluding that CUPE had acquiesced in the exclusion of all 39 positions that it had applied for under Section 139 of the Code. *Held:* The City's preliminary objection was upheld and CUPE's application was dismissed.

Canadian Affiliates of the Alliance of Motion Picture and Television Producers, BCLRB No. B250/2003 — Teamsters 155 applied under Section 99 of the Code for review of an arbitration award filed under the Jurisdictional Resolution Agreement (the "JRA"), a specialized dispute resolution mechanism in the film industry. The Union argued the Umpire went beyond the original disputes and provided a jurisdictional answer to issues that were not before him.

The panel found the Umpire did not embark upon a wholly different arbitration from that agreed to by the parties. The panel found it was the parties who expanded the evidence and argument and who redefined the issues before the Umpire. All of the parties had the opportunity to present evidence and argument on the broader issues. The panel further found that to the extent the broadening of issues during the course of the process before the Umpire constituted a "recharacterization" of the issues in dispute, the recharacterization was consensual and all parties were afforded a fair hearing with respect to the broader dispute.

Forest Industrial Relations, BCLRB No. B267/2003 (Leave for Reconsideration of BCLRB No. B256/2003) — FIR and Flavelle each applied under Section 141 of the Code for reconsideration of BCLRB No. B256/2003, in which the original panel determined an issue of collective bargaining format. Specifically, the original panel found that Local 1-3567 was not bound by a Protocol Agreement between FIR and the IWA Provincial Negotiating Committee concerning Main Table negotiations for the Coast Master Agreement. Accordingly, Local 1-3567 was entitled to bargain separately with FIR for the Flavelle operation. FIR and Flavelle submitted that, in coming to this conclusion on the collective bargaining format issue, the original panel rendered a decision inconsistent with the Code principles.

The reconsideration panel was not persuaded by FIR's argument that the original panel erred in its analysis of the effect of accreditation on the "default" bargaining format. Namely, the reconsideration panel was not persuaded that the intention of Section 43 was to have

accreditation "trump" certification in terms of determining the scope of the bargaining unit and therefore the "default" bargaining unit. Accreditation operates "despite the Code" in the sense that, notwithstanding the individual employer members of an accredited employer organization continue to be named on the individual certifications held by a union, the union is compelled by accreditation to bargain with the accredited employer organization. It can no longer insist upon bargaining with the employer to which it is certified. Further, as a result of the exclusive bargaining agency status conferred by accreditation, an accredited bargaining agent such as FIR may compel individual members, such as Flavelle, not to agree to terms with which Flavelle might otherwise be persuaded to agree. Or, FIR may agree to union proposals with which Flavelle may not agree. Accreditation does not alter the scope of the bargaining unit, which continues to be determined by the certification. The scope of the bargaining unit, in turn, determines the default bargaining format. In order to alter the default bargaining format, the certification must be altered. The reconsideration panel was not persuaded the reference to appropriateness in Section 43(4)(a) reflects a current legislative intent that accreditation affects or alters certification.

With respect to the validity of the CIPA strike vote, the reconsideration panel was troubled by the original panel's conclusion that Local 1-3567's strike vote and strike notice met the requirements of the Code, despite the fact that no collective bargaining had taken place. The panel found that, when faced with FIR's refusal to bargain, Local 1-3567 should have first applied for relief from the Board under Section 11 for failure to bargaining in good faith. Local 1-3567 acted precipitously in not seeking an order compelling FIR to bargain before proceeding to take a strike vote. While the reconsideration panel agreed with the original panel's finding that FIR failed to bargain in good faith, the appropriate remedy under the circumstances for such a finding was an order that bargaining occur, as in fact the original panel did order. The reconsideration panel found that the additional finding or order that the CIPA strike vote and strike notice met the requirements of the Code was not an appropriate remedy. Therefore this aspect of the remedial order was set aside.

The reconsideration panel also noted that while no party sought reconsideration of the original panel's conclusion that Section 2 of the Code applies to the parties as "other persons", that issue is a significant matter with potentially far-reaching implications, and is best left for consideration in circumstances where submissions have been made to the Board on that issue. *Held:* Leave granted and the applications for reconsideration were allowed only to the extent of varying the conclusion in the original decision concerning the CIPA strike vote and subsequent strike notice.

Westfair Foods Ltd., BCLRB No. B268/2003 (Leave for Reconsideration of BCLRB No. B124/2002) — UFCW applied for reconsideration of BCLRB No. B124/2002 which upheld an arbitration award where the arbitrator decided not to award back pay to the grievor for the period of his suspension up to the time Westfair undertook to determine if there was alternative employment for him in its operation. The arbitrator declined to order back pay because Westfair was entitled to consider the seriousness of the criminal charges in the context of Westfair's concern with respect to the security of its employees and safety of its property.

The reconsideration panel found the balancing of interests test may be used by an arbitrator in determining remedy, including the extent of liability for back pay. Such a test leaves it open to an arbitrator to consider how much of the risk each party should bear in a given set of circumstances. Therefore, on this analysis, it is open to an arbitrator to apportion remedial risk or even refuse to compensate a grievor. The reconsideration panel found that, on a sympathetic reading of the award, the only reason provided for denying back pay was the seriousness of the charges. The

reconsideration panel found there was no reasoned analysis linking the impact of the seriousness of the charges on remedy to the central conclusion of no just cause. The reconsideration panel found the original panel erred in giving the award an overly sympathetic review. *Held:* The Award was remitted to the Arbitrator to provide a reasoned analysis regarding the remedial outcome as it relates to the denial of back pay.

Grand Forks District Savings Credit Union, BCLRB No. B275/2003 (Leave for Reconsideration of BCLRB No. B269/2002) — An original panel found the Employer had breached Sections 6(1), 6(3)(a) and 9 of the Code by issuing a misleading and inaccurate memorandum to employees after Certain Employees had applied to decertify the Union, but before a representation vote was conducted. The Employer sought to have the amended Sections 8 and 6(1) of the Code applied by the reconsideration panel despite the fact that all the evidence and arguments were advanced before the original panel prior to the enactment of the amendments to Sections 6(1) and 8.

The reconsideration panel found that to apply the amended legislation in the circumstances of this case would mean giving the legislation retroactive effect. As the reconsideration panel found the legislation was not intended to have retroactive effect, the applicable law was the legislation prior to the amendments.

The reconsideration panel found the original panel did not conclude the Credit Union had engaged in improper interference because the statements in the memorandum were effective or because a reasonable person would attribute to the Union or its supporters the statements "corrected" by the Credit Union. Rather the original panel concluded both that the memorandum amounted to improper interference because it contained false, inaccurate or misleading statements and, to the extent to which it dealt with some unfounded rumours, it was primarily an anti-union political style campaign document.

While the Board is generally very reluctant to interfere with the fact-finding exercise by an original panel, in this case, the panel found it was evident the original panel took an unusual approach in reaching its conclusion regarding certain statements at issue when it declined to make any findings regarding the credibility of witnesses or to reconcile clearly divergent testimony in areas that were crucial to the determination of those issues. The reconsideration panel found the original panel erred by characterizing the memorandum as an anti-union political style campaign document without any analysis or explanation and by determining that the certain statements were misleading and inaccurate, without considering and weighing all of the evidence before it.

With respect to remedy, the panel found that the statements in the memorandum that were properly found to have been misleading and inaccurate might have influenced the first vote. Accordingly, it would be unlikely to disclose the true wishes of the employees. The second vote would likely have been influenced by the findings of the original panel that were in error. Accordingly, that vote is unlikely to reflect the true wishes of the employees. Therefore, the reconsideration panel was not satisfied that either vote was reliable or would properly reflect employee wishes. *Held:* New vote ordered to be conducted.

4020 Investments Ltd. (Dufferin Care Centre), BCLRB No. B283/2003 (Leave for Reconsideration of Letter Decision dated June 4, 2003) — The IUOE applied for reconsideration of a preliminary, "bottom line" ruling in which the original panel determined that certain individuals should not be included for the purposes of determining threshold membership support.

The reconsideration panel denied leave for reconsideration on the ground that the application was premature. The panel noted

that leave is rarely granted where a party seeks to reconsider a preliminary, procedural or other "interlocutory" determination by a panel. The issues may be rendered moot or academic by the original panel's ultimate disposition of the matter. Further, review of interlocutory rulings could lead to a proliferation of proceedings and increased delay. Parties should generally wait until a final decision has been rendered before applying for reconsideration. Review of a ruling before a final decision has been rendered will only be undertaken if the ruling raises a serious matter of jurisdiction, will result in irreparable harm, or presents other exceptional circumstances requiring a reconsideration panel to intervene.

The reconsideration panel found there were no exceptional circumstances requiring a reconsideration panel to intervene at this point. *Held:* Application for leave for reconsideration was denied.

Campbell Goodell Traynor Consultants Limited, BCLRB No. B288/2003 (Leave for Reconsideration of BCLRB No. B232/2003) — The Union applied for reconsideration of BCLRB No. B232/2003, which dismissed the Union's complaint alleging the Employer had breached the Code by giving notice that it was closing its phone room and terminating the employees in the bargaining unit. The Union argued the original panel erred in concluding the Employer's express reason for the closure (to save costs) was not a breach of Sections 6(3)(a) and (d) of the Code.

The reconsideration panel upheld the original decision noting that there had been no finding of anti-union animus in the closure. The panel also made a number of comments regarding current significant labour relations issues in order to encourage consideration as to how these types of matters can be advanced under the Code. The panel noted that in order to produce a suitable return on investment, businesses must be productive, competitive, and ultimately profitable. The panel noted there is a need to attract investment to the province and to protect fundamental rights of employees. Finally, the panel noted the importance of co-operative participation through which creative solutions for certain key labour relations issues can be found in a way that recognizes the interests of both parties. *Held:* The Union's application for leave for reconsideration was denied.

British Columbia Lottery Corporation, BCLRB No. B289/2003 (Leave for Reconsideration of BCLRB No. B82/2003) — The Union applied for reconsideration of BCLRB No. B82/2003 in which the original panel gave reasons for a number of "bottom-line" decisions. In particular, the Union took issue with the original panel's handling of its prima facie case objection to the Employer's Section 9 complaint, the original panel's finding that Wong breached Section 9, and the original panel's finding that the Employer did not breach Section 32 in matters other than the layoff of Wong.

The reconsideration panel found that the original panel did not err in deferring the prima facie determination. Section 133(4) of the Code provides that if, in the Board's opinion, the application or complaint is without merit, it may reject an application or complaint at any time. Therefore, the prejudice to the Union by deferring the prima facie determination did not amount to a breach of natural justice or irreparable harm. Further, a prima facie determination is discretionary and a panel of the Board may or may not choose to exercise its discretion to make a prima facie determination.

With respect to the finding that Wong's inaccurate e-mail communication to other employees regarding the effect of the Code's post-certification statutory freeze provision constituted coercion and/or intimidation and was a breach of Section 9 of the Code, the reconsideration panel found that, applying the Convergys legal standard, Wong's communications did not constitute coercion or intimidation and was protected under Section 8

of the Code. While the original panel did not have the benefit of the analysis in Convergys, the reconsideration panel found that it was necessary to apply the legal standard set out in Convergys to ensure the broad consistency of the Board's law and policy. The reconsideration panel found the original panel did not give the weight required under the Convergys analysis to the basic right to communicate; the need to treat employees as adults (including their ability to recognize a situation as one which would naturally include promises and puffery); the ability the employees had to check whether what Wong was asserting was true; and the ability of the Employer to reply and correct what Wong was asserting.

With respect to the Section 32 determinations, the reconsideration panel noted that the Board would normally expect an employer to apply for permission in advance of a major change such as a mass layoff. The reconsideration panel found the original panel did not err in applying the jurisprudence to the facts before it. *Held:* The Union's reconsideration applications in respect to the prima facie case and Section 32 determinations in the original decision were dismissed, but the application in respect to the Section 9 determination regarding Wong was granted. The order requiring a new representation vote was overturned and the March 25, 2002 vote was ordered to be counted.

Vancouver Film School Limited, BCLRB No. B291/2003 (Leave for Reconsideration of BCLRB No. B387/2002) — The Employer applied for reconsideration of BCLRB No. B387/2002 that held that the unit applied for was an appropriate bargaining unit. As part of its reconsideration application, the Employer challenged the Board's law and policy in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), (1993), 19 CLRBR (2d) 161 ("*IML*") and how it has been applied. The Employer argued the Board's approach in *IML* is based on a narrow view of industrial stability. It argued the *IML* building block approach can and does result in the initial certification of bargaining structures, which it argued are not responsive to concerns of industrial stability. Therefore, it argued the Board should reject the building block approach set out in *IML* and return to its previous policy favouring broad based units.

The reconsideration panel found that *IML* emphasizes both access to collective bargaining and industrial stability are fundamental and are present in a determination of appropriateness. The reconsideration panel further noted that *IML* has a baseline industrial stability requirement on an initial application for certification, which was set by Woodward's. The decision in Woodward's limits what will be found to be a community of interest and thus an appropriate unit for traditionally difficult-to-organize industries or sectors. However, there is a fairly rigorous evidentiary requirement to establish that the industry or sector is traditionally difficult-to-organize: the "structural or systemic aspects of the workforce" test. If that test is not met, the issues of community of interest and appropriateness should not be "relaxed". Therefore, the reconsideration panel did not accept the argument that the test in *IML* is unresponsive or insufficiently responsive to concerns of industrial stability.

The reconsideration panel found the original panel misinterpreted *IML* and erred in assessing the legal ramifications of its factual findings. The reconsideration panel overturned the original decision and dismissed the application for certification. *Held:* The original decision was overturned. The application for certification was dismissed, with the result that the certification was set aside.

P. Sun's Enterprises (Vancouver) Ltd. (Hotel Grand Pacific), BCLRB No. B301/2003 — The Union complained that the Employer breached Section 6(1) of the Code by refusing to provide it with a list of the names, home addresses and home telephone numbers of

employees in the bargaining unit that the Union represents. The Employer argued it was not obligated to provide the Union with such a list and submitted the Union has other means of obtaining that information. The Union argued it needed that information to discharge its obligations to the members of the bargaining unit. This raised the issue of whether an employer interferes with the administration of a trade union if, when asked by a union that represents certain employees, it refuses to provide a list of the names, addresses and home phone numbers of those employees in circumstances where (i) it could provide such a list with little or no effort or expense; (ii) it would take the union more effort and expense to obtain the information by other means; and (iii) protecting the employees' privacy is the only reason the employer gives for refusing the union's request.

The panel concluded that to fulfill its statutory obligations a union has to be able to communicate with the employees it represents. If an employer does not have a sound business purpose for refusing to provide a union with the information needed to communicate with those employees, the employer interferes with the union's representation of those employees. The panel further concluded that if an employer interferes with a trade union's representation of employees, it interferes with the administration of the trade union within the meaning of Section 6(1) of the Code. The panel found that the Employer did not have a sound business reason for refusing to provide the Union with the current addresses and phone numbers of the employees in the bargaining unit the Union is certified to represent. *Held:* The Employer breached Section 6(1) of the Code and was ordered to forthwith provide the Union with the information it requested.

Forest Industrial Relations Limited, BCLRB No. B312/2003 (Application for Reconsideration outstanding) — FIR applied under Part 5 of the Code alleging that the Union breached Section 59 of the Code by conducting a strike vote prior to bargaining collectively in accordance with the Code. FIR argued that the Union had not met this requirement because, in light of the amendments to Section 2 of the Code, a different test must be applied from the Board's existing test. Specifically, FIR argued the test must include a consideration of whether in substance the Union's proposals are being taken to impasse are consistent with Section 2. FIR alleged that the Union's proposals were inconsistent with Section 2(b) because they did not sufficiently take into account the need for "fostering the employment of workers in economically viable businesses". Essentially, FIR was seeking to have the Board require the Union to re-cast its bargaining proposals in a manner that was more responsive to the productivity and competitiveness concerns of FIR. It submitted that by proposing a settlement consistent with the settlement in the Northern and Southern Interiors when it knows that the Coast has issues which require a unique settlement, the Union was not "bargaining collectively in accordance with the Code" under Section 59(1).

FIR submitted the amendments to Section 2 of the Code constitute a profound change from the previous provision and the Board is now under a mandatory duty to "invigilate" collective bargaining in the province, and to ensure that collective bargaining conforms to the duties under Section 2 of the Code.

The panel found it was evident that the test for bargaining collectively under the Code had been met: there had been an exchange of comprehensive proposals by FIR and the Union and an exchange of views on the key issues including the economic viability of the coastal forest industry. With respect to the question of whether, by its amendments to Section 2, the Legislature intended to overrule the Board's current approach to Section 59, and in particular the Board's long-standing reluctance to review the reasonableness and quality of the substance of the bargaining proposals, the panel was not persuaded that the

addition of Section 2(b) was intended to alter the Board's current test under Section 59.

While the Board has a role to play in creating the conditions in which the Section 2(b) objectives of economic viability and employment may be achieved, it is the parties themselves who are in the best position to determine the terms for achieving those objectives. The panel was not persuaded that the Legislature intended the Board, under Section 59, to invigilate the substance of collective bargaining proposals for consistency with Section 2 duties. Parties to a collective agreement must find ways to develop a process to work out issues, while the Board can assist in a variety of ways, the result cannot be imposed by Board intervention. *Held:* FIR's application for an order declaring that the union's strike vote had not met the requirements of Section 59 was dismissed.

Ben Speckling and Walter Speckling, BCLRB No. B333/2003 (upheld on reconsideration, BCLRB No. B31/2004) — Ben Speckling alleged CEP breached Section 12. The Union fined him for contravening its overtime policy. When he refused to pay the fine and thereby lost membership in good standing, the Union demanded his dismissal pursuant to the collective agreement's security clause.

The panel found the issue of whether the Union could validly levy the fine under its constitution is one for the Union appeal process and, ultimately, the courts. While Section 10 gives the Board jurisdiction to consider some issues related to union discipline, Ben Speckling had not filed a Section 10 complaint. As regards the Section 12 complaint, the Panel found the Union's demand for Speckling's dismissal under the security clause was not arbitrary, discriminatory or in bad faith. The Union acted reasonably, for a legitimate and compelling purpose (to provide work for the laid off employees), and not in a discriminatory fashion or for any improper purpose. *Held:* Ben Speckling's Section 12 complaint was dismissed.

BC Rail Ltd., BCLRB No. B351/2003 — The Council of Trade Unions sought an order compelling the Employer to comply with Section 54 in relation to the "impending sale of BC Rail". The Employer argued the application was anticipatory and speculative as Section 54 notice does not have to precede a sale.

The Panel found Section 54 does not require an employer to give unions 60 days notice prior to the sale of a business. Also, while Section 54 provides opportunity for a union and employer to meet to develop an adjustment plan and consider "alternatives", this is not meant to be a discussion with the union about alternatives to the sale agreement. Section 54 does not require an employer to make only tentative decisions until it has met with a union to endeavour to develop an adjustment plan. *Held:* Council's application dismissed.

Overwaitea Food Group, A Division of Great Pacific Industries Inc., BCLRB No. B361/2003 (Leave for Reconsideration of BCLRB No. B322/2002) — The Legislature has not provided a new definition of picketing since *KMart* (SCC). The issue in this case is the basis upon which constitutionally protected consumer leafleting should be distinguished from conventional picketing which is subject to regulation under Part 5 of the Code.

The Reconsideration Panel found the "signal effect" analysis that was adopted by the original panel involved difficult evidentiary requirements and judgment calls. The Reconsideration Panel adopted an objective "bright line" test. The following is the approach the Board will take. (1) The alleged picketing must be in respect to a labour "dispute" or matter over which the Board has jurisdiction. If there is no "dispute", the impugned activity does not fall under the Code. (2) In order to be constitutionally protected consumer leafleting, the conduct

must conform with the conditions set out in *KMart* (at para. 58) for permissible leafleting. (3) If the impugned conduct does not constitute constitutionally protected leafleting, it may be regulated under the Code. When determining whether "conventional" picketing is present, the Board will consider factors such as the number of participants, their location, the nature of their activities, and the presence or absence of placards or sign boards. This is a non-exhaustive list of attributes which characterize "conventional" or "traditional" picketing and, if present, will be regulated under Part 5 of the Code. *Held:* Original decision set aside.

A Representative on Behalf of Certain Employees of The British Columbia Corps of Commissionaires, BCLRB No. B396/2003 — Certain Employees sought revocation of PSAC's certification. A representation vote was conducted by mail and one of the ballots was returned in an unsigned envelope. Pursuant to Regulation 19(b)(ii) the ballot could not be counted but Certain Employees asked the Panel to exercise its discretion to regularize the vote under Regulation 20. The Panel found the power in Regulation 20 is not limited to regularizing omissions or impediments on the part of the Board or Returning Officer. It is broad enough to take into account omissions by the participants as well. The Panel ordered the ballot be counted.

University of British Columbia, BCLRB No. B409/2003 (Application for reconsideration outstanding) — The Employer applied under Sections 65(3) and 67 of the Code for orders declaring that two CUPE locals may not picket on the Employer's property. The Panel found the Board does not have jurisdiction to regulate trespass. Under the Code, ownership of land or the right to assert trespass does not dictate where a union can picket. The Board's jurisdiction is to define the site or place where picketing can occur and its analytical approach is to define picketing by reference to where work is -- not by whether the right to be present on the land has been withdrawn. *Held:* Union's preliminary objection sustained.

Health Employers' Association of British Columbia, BCLRB No. B415/2003 (Application for reconsideration outstanding) — HEU alleged the Health Employers failed to meet their Section 54 obligations. The Employers had contracted-out almost all positions covered by the HEU certification in certain departments. The Employers said this was an irrevocable change to the operations and they refused to discuss alternatives. The question before the Panel was whether amendments to Section 2 altered the duties imposed by Section 54 on employers and unions.

The Panel found Section 2 does not impose duties upon the parties. The Section 2 reference to "other persons" is aimed at the decision makers under the Code such as arbitrators, mediators and special investigating officers. The Panel disagreed with HEU that the Board could require employers to give more than 60 days notice of a change in keeping with Section 2. The Legislature expressly set the employers' obligation at 60 days notice. The Employers met that obligation in this case.

However, the Employers had not met their second obligation under Section 54, that being the requirement to meet with HEU in good faith to endeavour to develop an adjustment plan. As a result of the Section 2 amendments the Board is under a greater imperative to encourage parties to discharge their obligations consistent with the principles expressed in Section 2. Therefore, each party must give due consideration to issues relevant to the other. They must at least discuss all of the issues that each considers important. It was not enough for the Employers to say that their decision was irrevocable and refuse to discuss it. The question of irrevocability was not settled as the contracts provided for no-cause termination. Also, while the Health and Social Services Delivery Improvement Act removed collective

agreement barriers to contracting-out, it did not make contracting-out the only alternative. The Employers' refusal to consider alternatives that HEU might propose was a breach of Section 54. *Held:* Employers ordered to discuss alternatives with HEU

Dan Atkinson, Trevor Towell and Rob White, BCLRB No. B422/2003 (upheld on reconsideration in BCLRB No. B172/2004) — The five Complainants alleged CLAC breached its duty of fair representation by allowing their seniority to be "endtailed" after they merged with a CLAC unit of twenty-five employees. The Panel found CLAC breached its duty of fair representation. CLAC had assumed the role of exclusive bargaining agent for both groups of employees and was statutorily obligated to act on behalf of all employees. CLAC knew that dovetailing seniority lists had been the practice when groups of employees merged. Instead of taking a reasonable view of the problem and making a thoughtful judgment about how to address seniority, CLAC let the employees decide by a vote. The outcome was a foregone determination based on self interest. CLAC's actions were arbitrary and discriminated against the Complainants. *Held:* Section 12 complaint granted.

Westroc Inc. (now called BPB Canada Inc.), BCLRB No. B445/2003 — Hoogstins applied to have a Consent Order which was issued by the Board filed in the Supreme Court of B.C. pursuant to Section 135 of the Code. The Panel found that the Consent Order in question is not the type of order contemplated by Section 135(1) as it was an inchoate document, conditional upon a successorship application being adjudicated. It is not the type of final decision or order which a Supreme Court could or would enforce. *Held*: Section 12 application denied.

IV. JUDICIAL REVIEW

1. ***Godding v. Employment Standards Branch***, 2003 BCSC 193 — The Supreme Court dismissed Godding's applications for judicial review of decisions of the Employment Standards Tribunal and the Labour Relations Board. The Court found the standard of review to be patently unreasonableness and that the Board's decisions to dismiss his Section 12 and Section 141 applications were not patently unreasonable.

2. ***Professional Employees Assoc. v. James et al***, 2003 BCCA 181 — The Court of Appeal heard and dismissed an appeal of a chambers judgment upholding BCLRB No. B69/2002 where the reconsideration panel ordered a rehearing because the original panel allowed the Employer, whose interests were allied with the Union, to cross-examine the Union's witness after the James had completed his cross-examination.

3. ***Ancheta v. Ready et al.***, 2003 BCSC 529 - Ancheta applied to judicially review an arbitration award that dealt with the termination of his employment. Ancheta had applied to the Board to review the decision of the arbitrator under Sections 99 and 141. These applications were dismissed. At the Supreme Court, Ancheta raised arguments that did not form part of his Section 99 application for review in order to set the arbitrator's decision aside. The Court held that, in seeking judicial review of an arbitration award, Ancheta could not rely arguments that were not made to the Board under Section 99. *Held:* The petition for judicial review was dismissed.

4. ***British Columbia Teachers' Federation v. BC (Attorney General)***, 2003 BCSC 534 - The petitioner brought an application challenging the constitutional validity of the definition of "strike" in the Code. The Attorney General brought a preliminary objection arguing that it is more appropriate that the Board hear this matter first, as the Board is a more appropriate forum in the first instance for deciding a labour relations matter and it has the authority to decide constitutional issues. The petitioner argued that the Board was not the most appropriate forum to determine Charter issues and argued that there continued to be a live issue between the parties and other parties in the labour relations community that needed a measured decision by the Court. The Court found that the factors outlined by the Supreme Court of Canada in *Cuddy Chicks v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, were overwhelmingly in favour of this case being referred to the Board for consideration in the first instance. *Held:* The Court sustained the Attorney General's objection and dismissed the petition with an order that the issue of the constitutional validity of the definition of strike in the Code be remitted to the Board.

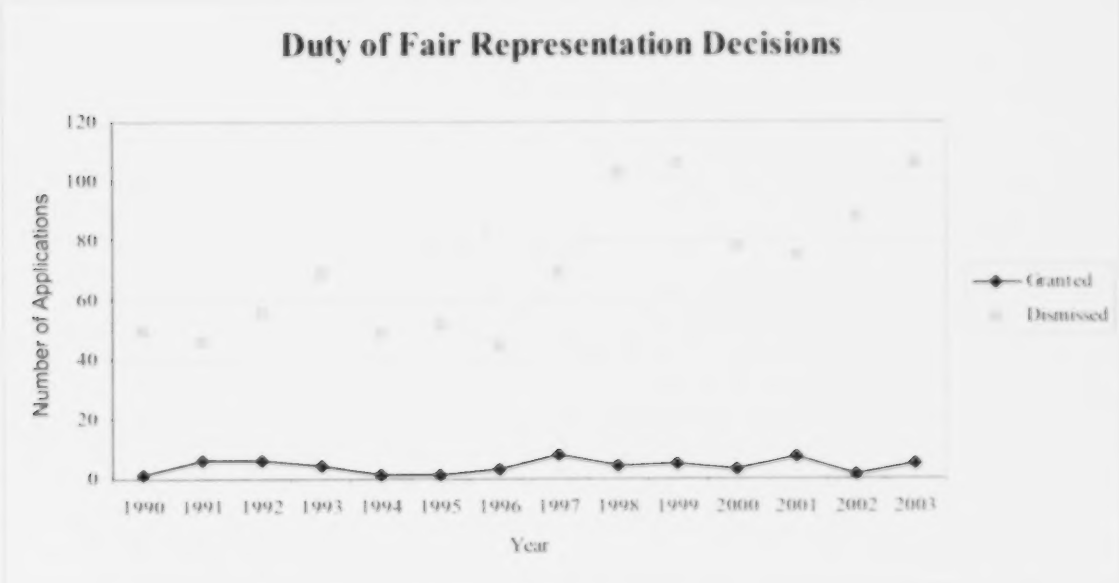
5. ***Speckling v. British Columbia (Labour Relations Board)***, 2003 BCCA 240 - The Court of Appeal dismissed Speckling's appeal of a judicial review upholding BCLRB No. B379/2001, which found that Speckling had not established that the Union breached Section 12 in its handling of his grievance. The Court of Appeal found that the decision of the Board was well within any rational view of its jurisdiction. *Held:* The appeal was dismissed.

6. ***Island Tug & Barge Ltd. v. Communication, Energy and Paperworkers Union, Local 601***, 2003 BCCA 247 - Island Tug & Barge ("ITB") appealed the decision of BC

Supreme Court that dismissed their injunction application, finding that the picketing was within the jurisdiction of the Province and therefore the Board. The issue was whether jurisdiction over certain picketing was federal or provincial. Water pickets of a provincially regulated Petro-Canada facility by its lawfully striking employees had the effect of preventing ITB from picking up product there. ITB, which was federally certified by the CIRB, argued the pickets therefore affected the "essential operations of a federal undertaking" within principle enunciated in *Hecate Logging Ltd. v. I.W.A. Local 1-85* (1988), 29 B.C.L.R. (2d) 318 (C.A.). The BC Court of Appeal dismissed the application on the basis that the evidence did not demonstrate that ITB's vessels travelled outside the province, so as to establish it as a federal undertaking. *Held:* The appeal was dismissed.

7. ***Budgell v. British Columbia (Labour Relations Board) et al***, 2003 BCCA 605, overturning 2003 BCSC 119 — The Court of Appeal allowed an appeal of a chambers judgment quashing BCLRB No. B108/2001 wherein a reconsideration panel dismissed a Section 12 complaint after considering it afresh.

The Court of Appeal found the Chambers Judge had applied an improper standard of review upon judicial review of the Board's decision. The Chambers Judge had considered the Section 12 complaint afresh. He considered whether the Board's decision was wrong rather than whether it was patently unreasonable. The chambers judgment was set aside and the judicial review application dismissed.



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EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of. In some cases, statistics from 2000 and other years are provided for comparative purposes. A number of changes have been made over the past few years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for the convenience of users.

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Section2 5 or 6) of the legislation were not broken down by sub-section. From 1989 on, complaints under each particular sub-section were counted as one complaint. In 1996, the Board decided to revert to the pre 1989 method of counting these complaints. The change affects the statistics published as Sections 2,3 and 4 of the Industrial Relations Act and Sections 5,6,7 and 9 of the Labour Relations Code. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting.

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Other Unfair Labour Practice Complaints (ss.5,6,7 and 9 of the *Labour Relations Code* or ss.2,3, and 4 of the *Industrial Relations Act*)	1995	825	909	26	0	573	192	118	0	449
	1995 (rev)	488	5[illegible]	25	0	338	97	69	0	221
	1994	899	831	9	0	586	136	100	0	362
	1994 (rev)	513	467	9	0	326	74	58	0	176
	1993	748	676	3	0	440	134	99	0	331
	1993 (rev)	422	390	2	0	249	73	66	0	177
	1992	416	345	0	0	205	108	32	0	176
	1992 (rev)	228	185	0	0	112	54	19	0	83
	1991	346	370	0	0	241	92	37	0	NP
	1991 (rev)	187	199	0	0	135	44	20	0	
	1990	386	388	5	0	220	100	63	0	NP
	1990 (rev)	229	225	3	0	124	62	36	0	
	1989	209	177	0	0	96	47	34	0	NP
	1989 (rev)	123	118	0	0	61	36	21	0	

NP -- Not Published

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each in question. If the application was withdrawn, it was counted as one application regardless of the number of employees involved. From 1989 on, an application regarding the inclusion or exclusion of employees has been counted as one application.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 has been counted as a separate application.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989. These applications had been processed by the Board/Council since 1974 but had not been registered or counted prior to 1989.

Stay Applications

These applications have been added to applications filed and disposed of in Table 1 for the first time in 1993. They are included in the Miscellaneous category. In previous years, these applications were not counted.

General Notes

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled even in those cases where the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

TABLE 1

Applications and Complaints Filed and Disposed of in 2002 - 2003

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Complaints of Unfair Labour Practices										
Complaints Regarding Internal Union Affairs (s.10)	2002	14	25	3	0	12	0	10	0	2
	2003	15	15	2	0	5	2	6	0	3
Complaints Regarding Duty to Bargain in Good Faith (s.11)	2002	38	41	1	0	32	3	5	0	3
	2003	42	43	1	0	29	5	8	0	11
Complaints Regarding Duty of Fair Representation (s.12)	2002	177	186	62	0	35[1]	1	88[2]	0	16
	2003	189	192	53	0	28[3]	5	106[4]	0	14
Other Unfair Labour Practice Complaints (ss.5,6,7, 8 and 9)	**2002**	**305**	**315**	**6**	**0**	**207**	**57**	**45**	**0**	**98**
	2003	**294**	**291**	**3**	**0**	**222**	**39**	**27**	**0**	**126**
Religious Exemption (s.17)	2002	14	15	2	2	0	11	0	0	0
	2003	8	10	1	1	0	7	1	0	0

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1 For 20 settled complaints, a settlement conference was held.

2 29 of the 88 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

3 For 21 settled complaints, a settlement conference was held.

4 69 of the 106 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

5 **In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the Labour Relations Code. (See Explanatory Notes for details.)**

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Certification Applications (ss.18,19 and 28)	2002	152[1]	163	3	33	0	88[2]	39	0	135
	2003	165[3]	157	1	43	0	75[4]	38	0	125
Certification Variances (ss.28 and 142)	2002	251[5]	252[6]	8[7]	35	0	197	12	0	65
	2003	324[7]	282[8]	5	25	0	235	17	0	41
Certification Cancellations[9] (ss.33 and 142)	2002	158	157	24	6	0	111	16	0	90
	2003	118	113	15	11	0	75	12	0	81
Cancellation of a Voluntary Recognition (s.34)	2002	7	7	0	1	0	6	0	0	7
	2003	19	16	1	5	0	10	0	0	11
Permission to Alter Conditions of Employment (ss.32 and 45)	2002	2	3	0	2	0	1	0	0	0
	2003	2	1	0	0	0	1	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions (ss.32 and 45)	2002	20	25	0	0	17	5	3	0	7
	2003	27	21	0	0	18	3	0	0	8
Declaration of Successor Status										

[1] 4,706 employees were included in the 152 certification applications filed in 2002. Two of these applications were filed jointly by more than one union.

[2] 2,306 employees were included in the 88 certification applications granted in 2002. Seven of the certifications granted involving 360 employees were processed under the 'raid' provisions of the legislation.

[3] 6,273 employees were included in the 165 certification applications filed in 2003. One of these applications was filed jointly by more than one union.

[4] 2,220 employees were included in the 75 certification applications granted in 2003. (Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; therefore, the total number of certifications granted in 2003 is 71 covering 2,216 employees). Five of the certification applications granted involving 491 employees were processed under the 'raid' provisions of the legislation.

The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application. In the case of applications filed, the estimate could include some multiple counting where more than one union applied to cover the same group of employees.

[5] 35 of the 251 certification variance applications filed in 2002 were for partial decertification.

[6] 32 of the 252 certification variance applications disposed of in 2002 were for partial decertification. See TABLE 3.

[7] 32 of the 324 certification variance applications filed in 2003 were for partial decertification.

[8] 27 of the 282 certification variance applications disposed of in 2003 were for partial decertification. See TABLE 3.

[9] See TABLE 3.

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Successor Employer (s.35)	2002	115	111	1	20	0	80	10	0	20
	2003	77	77	0	19	0	55	3	0	10
Successor Union (s.37)	2002	105	124	0	1	0	123	0	0	19
	2003	56	27	0	0	0	26	1	0	1
Common Employer (s.38)	2002	27	32	0	16	0	8	8	0	12
	2003	31	22	0	13	0	6	3	0	8
Accreditation Applications (s.43)	2002	1	0	0	0	0	0	0	0	0
	2003	0	0	0	0	0	0	0	0	0
Accreditation Variances (ss.43 and 142)	2002	25	27	0	0	0	27	0	0	0
	2003	24	22	0	0	0	21	1	0	1
Accreditation Cancellations (s.142)	2002	0	0	0	0	0	0	0	0	0
	2003	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply With a Collective Agreement (s.49)	2002	10	15	0	0	8	4	3	0	2
	2003	9	7	1	0	4	1	1	0	0
First Collective Agreement (s.55)	2002	14	16	0	0	15	0	0	1[1]	1
	2003	9	11	0	0	4	0	0	7[2]	1
Appointment of a Mediation Officer (s. 74)	2002	105	112	0	0	89	0	0	23[3]	0
	2003	127	131	1	0	100	0	0	30[4]	0

[1] The dispute was referred to binding arbitration in one case.
[2] See TABLE 9
[3] In seven cases an appointment was made under Section 55, in six cases no agreement was reached, in five cases the dispute was settled at arbitration, in four cases the union was decertified, and in one case the file was closed due to inactivity.
[4] See TABLE 9

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
CAAB Applications (ss.86, 87, 104 & 105)[1]	2002	0	0	0	0	0	0	0	0	0
	2003	674	637	12	0	310[2]	297	0	18[3]	0
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss.57 to 70)	2002	56	54	0	0	36	15	3	0	21
	2003	78	54	0	0	28	17	9	0	30
Replacement Workers (s.68)	2002	6	7	0	0	6	0	1	0	3
	2003	2	2	0	0	0	1	1	0	1
Essential Service Designations (s.72)	2002	4	4	0	0	2	2	0	0	1
	2003	7	5	0	0	1	4	0	0	1
Last Offer Vote (s.78)	2002	20	20	2	0	0	18[4]	0	0	0
	2003	23	22	0	1	0	21[5]	0	0	2
Review of Arbitration Award (s.99)	2002	61	58	0	4	0	12	42	0	11
	2003	61	55	0	7	0	10	38	0	2
Interim Order (s.133(5))	2002	10	8	0	4	0	1	3	0	5
	2003	11	10	0	6	0	2	2	0	4
File an Order in Supreme Court (s.135)	2002	44	45	0	22	0	22	1	0	0
	2003	36	37	0	14	0	22	1	0	0

[1] Statistics are not available for 2002 (this table does not reflect the number of actual CAAB applications processed in 2002)

[2] 216 applications were withdrawn prior to the appointment of an Arbitrator or Settlement Officer under the Collective Agreement Arbitration provisions of the *Code*.

[3] For 18 applications the matter was referred back to the parties under Section 87(3) of the *Code*.

[4] In eight cases the final offer was rejected and in seven cases the offer was accepted; in two cases the employer withdrew its application before the vote was held, and for one case the ballot box remained sealed pending result of an unfair labour practice complaint (unit was subsequently decertified).

[5] In 11 cases the final offer was rejected and in seven cases the offer was accepted; in two cases the parties settled prior to the vote being conducted; and in one case the Board determined that a collective agreement was in effect prior to receipt of the application.

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS								
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139)	2002	40	61	4	24	0	0	0	33[1]	31
	2003	34	44	1	32	0	0	0	11[1]	11
Reconsideration of a Decision (s.141)	2002	88	92	1	8	0	19	64[2]	0	18
	2003	122	111	1	11	0	19	80[3]	0	10
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) (s.143)	2002	5	13	0	6	0	2	5	0	5
	2003	2	4	0	2	0	0	2	0	0
Miscellaneous	2002	137[4]	147[5]	0	20	63	32	32	0	48
	2003	138[6]	127[7]	5	10	37	45	30	0	15
TOTAL	**2002**	**2,011**	**2,135**	**117**	**204**	**522**	**845**	**390**	**57**	**620[8]**
	2003	**2,724**	**2,546**	**103**	**200**	**786**	**1,004**	**387**	**66**	**518[9]**

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

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1 Ruling made.

2 For 52 of the 64 applications dismissed in 2002, leave to apply was denied. See TABLE 5.

3 For 72 of the 80 applications dismissed in 2003, leave to apply was denied. See TABLE 5.

4 Includes six stay applications.

5 Includes eight stay applications, seven of which were dismissed, and one of which was withdrawn.

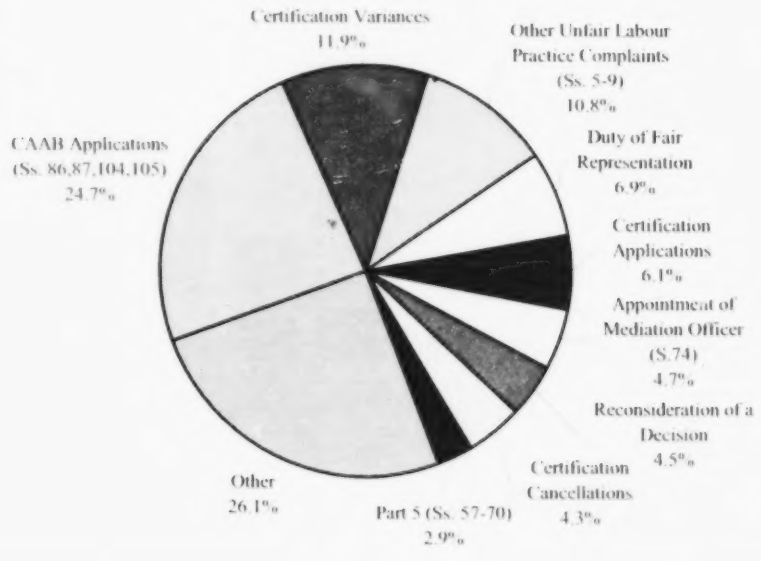
6 Includes 21 stay applications.

7 Includes 20 stay applications; 15 of which were dismissed, three granted, and one withdrawn.

8 620 applications disposed of in 2002 were heard some time during the process. In 2002, the Board held 359 hearings (including 250 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2002.

9 518 applications disposed of in 2003 were heard some time during the process. In 2003, the Board held 349 hearings (including 252 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2003.

Applications and Complaints Filed in 2003



Applications and Complaints Filed in 2002

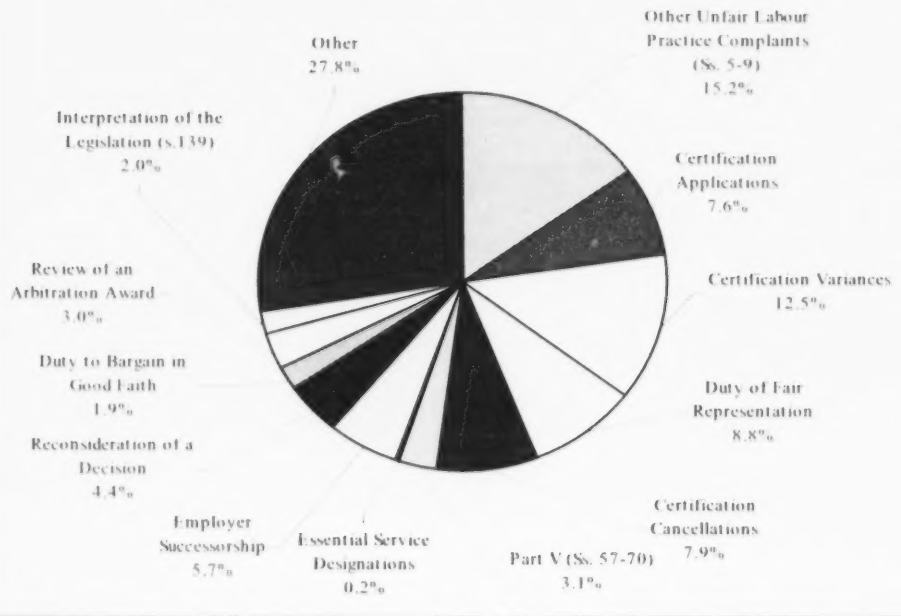


TABLE 1A

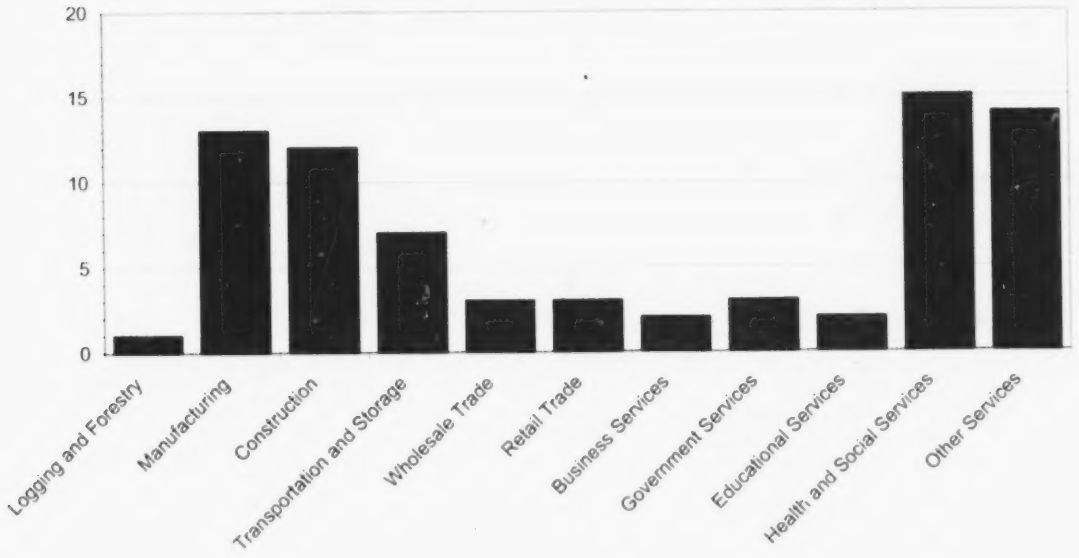
Certification Applications Granted in 2003Analyzed by Industry

Type of Industry	Number of Certification Applications Granted	Number of Employees
Logging and Forestry	1	14
Manufacturing	13	761
Construction	12	70
Transportation and Storage	7	123
Wholesale Trade	3	17
Retail Trade	3	96
Business Services	2	23
Government Services	3	45
Educational Services	2	69
Health and Social Services	15	517
Other Services	14[1]	485
TOTAL	**75[1]**	**2,220**

[1] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of certifications granted in 2003 amounts to 71 covering 2,216 employees.

Certification Applications Granted in 2003
Analyzed by Industry

Number of Applications



Number of Employees

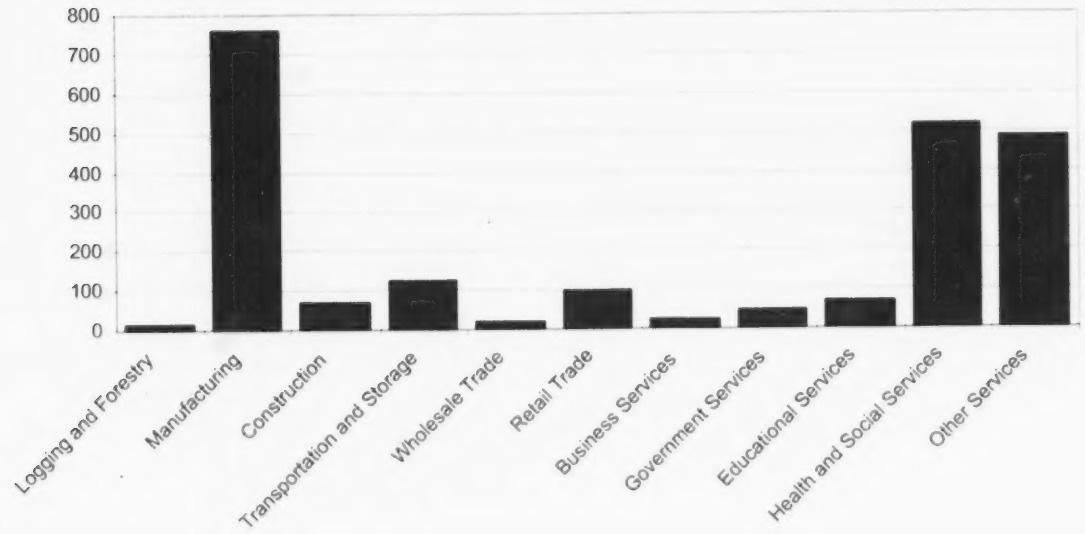


TABLE 1B

Certification Applications Filed and Granted in 2003Analyzed by Union

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Carpenters	13	1
Millwrights	3	1
CISIWU	1	1
CLAC	3	0
Electrical Workers (IBEW)	1	0
Glazier & Glass Workers	1	1
Iron Workers	5	2
Labourers	2	1
Machinists & Aerospace Workers	4	4
Operating Engineers (IUOE)	15	5
Painters (*excluding Glaziers 1527*)	2	1
Plumbers & Refrigeration Workers	5	2
Canadian Union of Skilled Workers – BC	0	1
Sheet Metal Workers	4	1
CEP	4	1
IWA	22	8
PPWC	0	1
Longshore (ILWU)	1	0
Marine Workers	3	2
Teamsters	6	4
Hotel Employees	2	0
IATSE	3	0
Service Employees (SEIU)	5	2
Health Science Association (HSA)	3	1

(continued)

TABLE 1B

Certification Applications Filed and Granted in 2003 Analyzed by Union - Continued

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Hospital Employees Union (HEU)	9	4
Nurses (BCNU)	9	5
Telecommunications Workers (TWU)	2	1
CAW	5	4
Steelworkers	6[1]	6[1]
Food & Commercial Workers (UFCW)	4	3
Progressive Bakery Workers	1	0
CUPE	6	3
BCGEU *(excluding Brewery Workers)*	10	7
OPEIU/OTEU	1	1
Single Employer Independent Union	5	2
TOTAL	**165[2]**	**75[1,2]**

[1] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of certifications granted in 2003 is 71.

[2] Adding the individual members in the column produces a large number because some applications were filed jointly by more than one union.

TABLE 2
Certification Applications Decided in 2003

Number of Applications	Granted	Dismissed	Total
Organized Employees	5	3	8
Unorganized Employees	70[1]	35	105
TOTAL	**75**[1]	**38**	**113**

Number of Employees	Granted	Dismissed	Total
Organized Employees	491	180	671
Unorganized Employees	1,729	2,981	4,710
TOTAL	**2,220**[1]	**3,161**	**5,381**

[1] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications involving previously unorganized employees is 66 and the total number of certifications granted for 2003 is 71 covering 2,216 employees.

TABLE 2A
Certification Applications Granted in 2003 by the Size of the Bargaining Unit

Number of Employees	Number of Certification Applications	Percentage of Certification Applications	Cumulative Percentage
1 to 10	39[1]	52.0%	52.0%
11 to 20	15	20.0%	72.0%
21 to 30	5	6.7%	78.7%
31 to 40	5	6.7%	85.4%
41 to 50	1	1.3%	86.7%
51 to 60	0	0.0%	86.7%
61 to 70	4	5.3%	92.0%
71 to 80	1	1.3%	93.3%
81 to 90	0	0.0%	93.3%
91 to 100	0	0.0%	93.3%
101 to 200	2	2.7%	96.0%
Over 200	3	4.0%	100.0%
TOTAL	75[1]		

TABLE 2B
Certification Applications Granted Between 1990 and 2003 by the Size of the Bargaining Unit

	Number and Percentage of Certification Applications						
Year	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		Total
1990	181	72.4%	47	18.8%	22	8.8%	250
1991	173	70.9%	47	19.3%	24	9.8%	244
1992	130	66.0%	47	23.9%	20	10.1%	197
1993	353	69.4%	102	20.0%	54	10.6%	509
1994	292	66.9%	86	19.7%	59	13.4%	437
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	3482
1999	239	65.8%	65	17.9%	59	16.3%	3633
2000	169	64.3%	45	17.1%	49	18.6%	263
2001	105	58.0%	40	22.1%	36	19.9%	181
2002	62	70.4%	13	14.8%	13	14.8%	88
2003	54	72.0%	11	14.7%	10	13.3%	75[1]

[1] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications granted for a bargaining unit size between 1 and 10 employees is 35 and the total number of certifications granted in 2003 is 71.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

[3] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

Certification Applications Granted in 2003 Analyzed by Size of Bargaining Unit

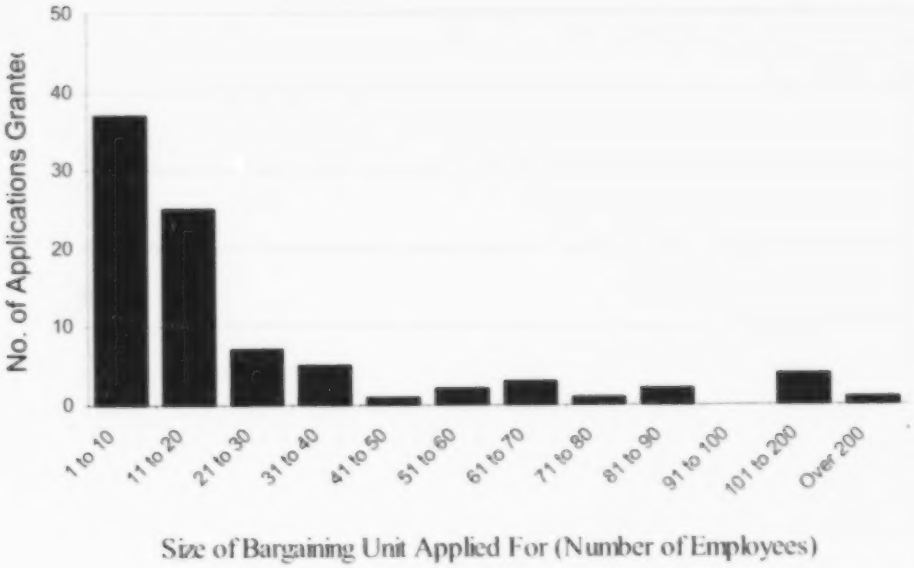


TABLE 3
Applications to Cancel Certifications Disposed of in 2002 - 2003

	Number of Applications	
	2002	2003
Filed by Employee(s) (s.33)		
Granted	72	62
Dismissed	14	11
Not Proceeded With	24	14
Withdrawn	5	11
TOTAL	**115**	**98**
Filed by Employee(s) (s.142)[1]		
Granted	17	16
Dismissed	4	8
Not Proceeded With	6	1
Withdrawn	5	2
TOTAL	**32**	**27**
Filed by Employer(s)		
Granted	8	4
Dismissed	2	1
Not Proceeded With	0	1
Withdrawn	1	0
TOTAL	**11**	**6**
Filed by Union(s)		
Granted	31	9
Dismissed	0	0
Withdrawn	0	0
TOTAL	**31**	**9**
Summary		
Granted	128	91
Dismissed	20	20
Not Proceeded With	30	16
Withdrawn	11	13
TOTAL	**189**[2]	**140**[2]

[1] Applications filed under Section 142 for 'partial decertification' are included in TABLE 1 under the category Certification Variances. The inclusion of these applications in TABLE 3 was initiated in the 2001 Annual Report.

[2] The summary totals in TABLE 3 do not match the number of Certification Cancellations disposed of in TABLE 1. Thirty-two partial decertifications plus 157 certification cancellation applications were disposed of in 2002. Twenty-seven partial decertifications plus 113 certification cancellation applications were disposed of in 2003.

TABLE 4

Representation Applications Disposed of in 2003 Resulting in a Vote

Type of Application	Number of Applications	Number of Successful Applications	Percentage Successful	Total Number of Eligible Voters
Certification --- a vote for or against one union or between two unions applying for the same unit	93[1]	70	75%	2,817
Certification --- a vote between an applicant and an incumbent union	5	5	100%	501
Expansion of a bargaining unit	22	17	77%	207
Decertification	72	62	86%	1,531
Partial decertification	19	16	84%	930
Cancellation of a voluntarily recognized collective agreement	8	8	100%	30
Arising out of Unfair Labour Practice Complaints	2[2]	0	0%	27
Arising out of an Appeal of an Unfair Labour Practice Complaint	1	1	100%	22
Section 24 application for second vote on an expansion of bargaining unit application	1	1	100%	55
TOTAL	**223**	**180**	**81%**	**6,120**

[1] Two applications resulted in one vote because two or more unions were applying separately for the same unit.
[2] Two applications resulted in one vote as per the parties' settlement agreement.

TABLE 5
Reconsiderations Disposed of in 2003

Type Of Application Being Reconsidered	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Internal Union Affairs	3	0	1	0	0	4
Duty to Bargain in Good Faith	0	1	0	0	0	1
Duty of Fair Representation Adjudication	37	0	1	0	0	38
"Other" Unfair Labour Practice Adjudication	3	1	2	3	0	9
Certification	6	2	3	2	0	13
Variance of a Certification	1	1	0	0	0	2
Partial Decertification	0	1	0	1	0	2
Cancellation of Certification	0	0	1	0	0	1
Declaration of Employer Successor Status	2	0	3	0	0	5
Alleged Illegal Strikes, Lockouts, Picketing, etc.	0	0	2	0	0	2
Review of Arbitration Award	8	1	3	1	0	13
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	3	1	1	0	0	5
Reconsideration Decision to Remit Parial Decertification to Original Panel	1	0	0	0	0	1
Adjudication re: Time Bar on Further Certification Application	0	0	0	1	0	1
Ruling re: Procedure	7	0	2	2	1	12
Ruling re: Remedy	0	0	0	1	0	1
Ruling re: Stay of Decision	1	0	0	0	0	1
TOTAL	**72**	**8**	**19**	**11**	**1**	**111**

Appellant	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Employer(s)	12	4	5	7	0	28
Union(s)	15	3	11	4	1	34
Employee(s)	45	1	2	0	0	48
Employer/Union (joint application)	0	0	1	0	0	1
TOTAL	**72**	**8**	**19**	**11**	**1**	**111**

Reconsiderations Disposed of in 2003
(Types of Applications Being Reconsidered)

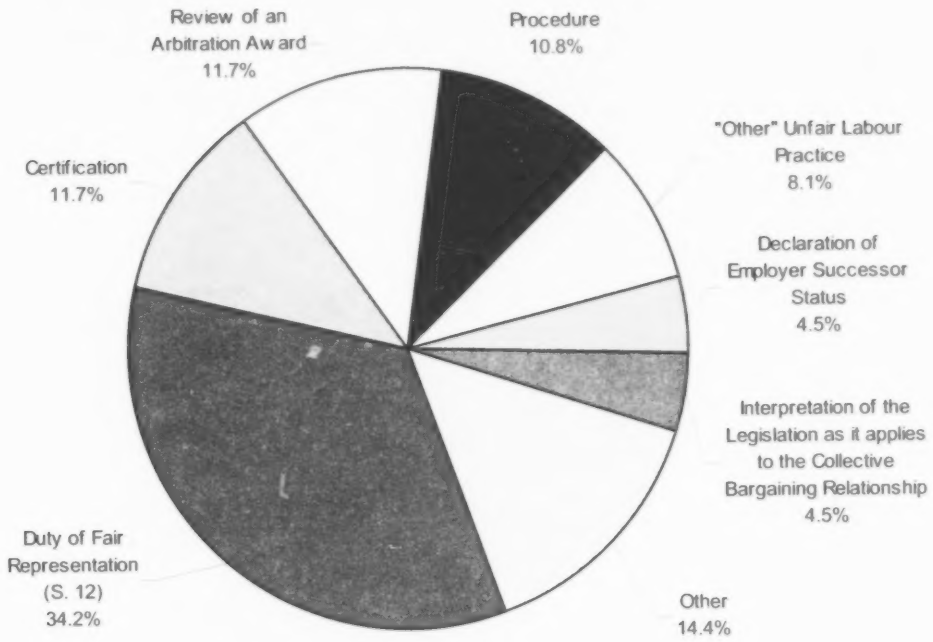
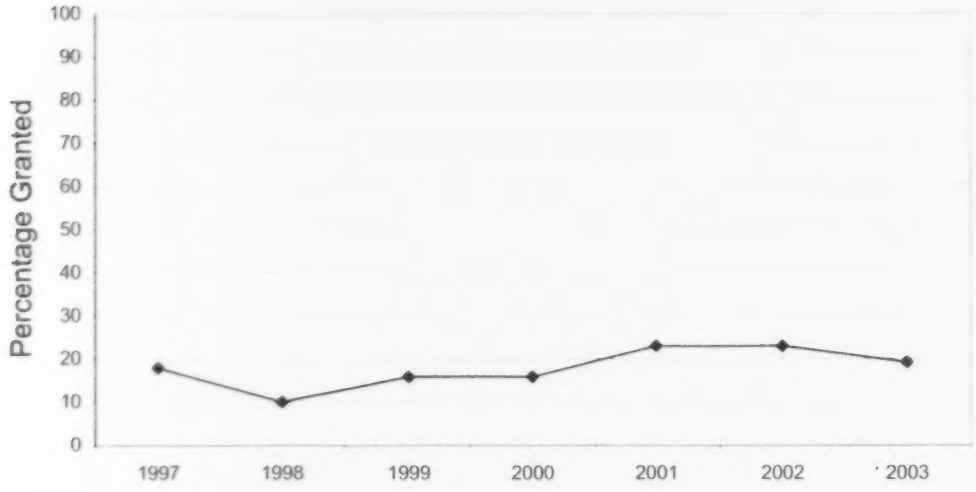

Review of an Arbitration Award 11.7%
Procedure 10.8%
"Other" Unfair Labour Practice 8.1%
Declaration of Employer Successor Status 4.5%
Interpretation of the Legislation as it applies to the Collective Bargaining Relationship 4.5%
Other 14.4%
Duty of Fair Representation (S. 12) 34.2%
Certification 11.7%

TABLE 6
"Success" Rate of Reconsiderations

	1997	1998	1999	2000	2001	2002	2003
Total Applications Disposed of	113	134	150	129	111	92	111
Number of Applications Withdrawn	21	20	9	11	13	8	11
Number of Applications Processed to a Final Decision	92	114	141	118	98	84	100
Number of Applications resulting in a Revision of the Original Decision	17	11	22	19	23	19	19
"Success" Rate of Reconsiderations	18%	10%	16%	16%	23%	23%	19%

"Success" Rate of Reconsiderations



"Success" Rate of Review of Arbitration Award

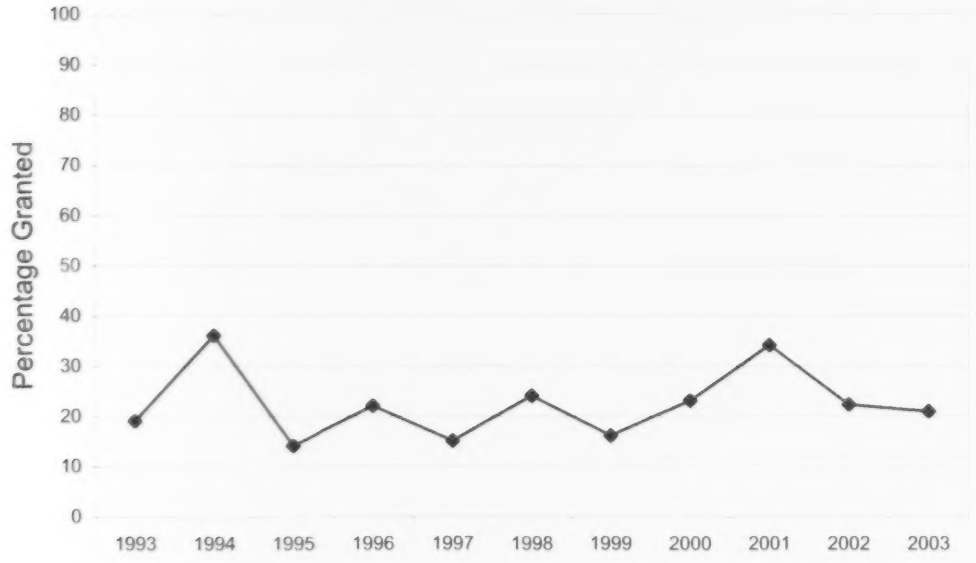


TABLE 7

Applications Pursuant to Part 5 of the Labour Relations Code (Strikes, Lockouts, Picketing, etc.) Disposed of in 2003

Type of Application	Number of Applications	At a Formal Hearing	In a Formal Decision
A			
1. Re: Alleged Illegal Lockout	4	3	
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	13	0	
3. Re: Picketing (Employer Complaint)	10	4	
4. Re: Picketing (Trade Union Application for a Declaratory Opinion)	0	0	
5. Re: Activity Affecting Business, etc.	1	0	
Sub-Total	28	7	
B.			
a) a violation had occurred or would occur or that a specific activity should be restricted, or b) that certain proposed picketing be allowed			
1. Re: Alleged Illegal Lockout	0	0	0
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	6	6	3
3. Re: Picketing (Employer Complaint)	11	11	3
4. Re: Activity Affecting Business, etc.	0	0	0
Sub-Total	17	17	6
C.			
a) by an adjudication that **no** violation had occurred or would occur or that a specific activity should **not** be restricted, or b) by a refusal to rule on the proceedings			
1. Re: Alleged Illegal Lockout	5	3	5
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	4	3	4
3. Re: Picketing (Employer Complaint)	0	0	0
4. Re: Picketing (Trade Union Application for a Declaratory Opinion)	0	0	0
5. Re: Activity Affecting Business, etc.	0	0	0
Sub-Total	9	6	9
TOTAL	**54**	**30**	**15**

Note: The applications in Table 7 include those filed to avert threatened strikes, lockouts and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 8

2003 Applications and Complaints Analyzed by Applicant

	Filed by Employer	Filed by Union	Filed by Employee	Other	Total[1]
Complaints of Unfair Labour Practices					
Complaints Regarding Internal Union Affairs	0	0	15	0	15
Complaints Regarding Duty to Bargain in Good Faith	6	36	0	0	42
Complaints Regarding Duty of Fair Representation	0	0	189	0	189
Other Unfair Labour Practice Complaints	10	276	22	0	294
Religious Exemption	0	0	8	0	8
Certification Applications	0	165	0	0	165
Certification Variances	100	260	32	0	324
Certification Cancellations	7	9	102	0	118
Cancellation of a Voluntary Recognition	1	2	16	0	19
Permission to Alter Conditions of Employment	1	1	0	0	2
Alleged Unlawful Alteration of Employment Terms and Conditions	0	27	1	0	27
Declaration of Successor Status					
Successor Employer	30	49	1	0	77
Successor Union	0	56	0	0	56
Common Employer	3	31	0	0	31
Accreditation Variances	24	0	0	0	24
Alleged Failure to Execute or Comply With Collective Agreement	0	9	0	0	9
First Collective Agreement	3	6	0	0	9
Appointment of a Mediation Officer	45	84	0	0	127
CAAB Applications	74	640	0	0	674
Part 5 Applications (Strikes, Lockouts, Picketing, etc.)	71	7	0	0	78
Replacement Workers	1	1	0	0	2
Essential Service Designations	0	0	0	7	7
Last Offer Vote	22	1	0	0	23
Review of Arbitration Award	35	23	3	2	61
Interim Order	5	6	0	0	11
File Order in Supreme Court	19	13	3	2	36
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	1	31	2	0	34
Reconsideration of a Decision	27	38	58	0	122
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation)	1	1	0	0	2
Miscellaneous	28	86	3	21	138
TOTAL	**514**	**1858**	**455**	**32**	**2724**[1]

[1] Totals by applicant do not equate with total applications because certain applications were filed jointly by more than one type of party.

TABLE 9
Analysis of Mediation Officer Appointments in 2003

Activity	Section 74	Section 55	Total
Appointments continued from previous year	21	4	25
Appointments made - January 1 to December 31, 2003	127	9	136
TOTAL	**148**	**13**	**161**
Disposition of Appointments			
Mediated settlement	100	4	104
Appointments continuing to nex year	17	2	19
Mediator reported out of dispute	18	n/a	18
Request for appointment not proceeded with (insufficient information on application)	1	0	1
Referred to arbitration under Section 55(6)	n/a	3	3
Parties allowed to exercise their right to strike / lockout under Section 55(6)	n/a	2	2
Unit decertified	5	0	5
Other (closure, etc.)	7	2	9
TOTAL	**148**	**13**	**161**

TABLE 10
Time Required to Process Certain Applications in 2003

Type of Application	Number of Applications Disposed of[1]	Average Number of Days	Median Number of Days
Unfair Labour Practice Complaints Under S.6 of the Labour Relations Code Where a Dismissed Employee is Involved	52	92	45.5
Complaints Regarding Duty of Fair Representation	139	177	120
Certification	156	52	13
Cancellation of Certification Under Section 33(2) of the *Labour Relations Code*	84	36	11
Declaration of Successor Employer	77	194	104
Common Employer	22	205	103.5
Review of Arbitration Award	55	154	112
Reconsideration of Decision	110	100	61

1 Excludes applications not proceeded with because applicant did not file sufficient information

TABLE 11
Officer Assignments in 2003

	TYPE OF APPLICATION						
	Part 5[1]	Unfair Labour Practice[2]	Certification and Expanded Bargaining Unit	Decertification (including Partial Decertification[3]	CAAB[4]	Other	Total
Settled/Withdrawn	4	45	30[5]	14	36	21	150
Resolved Issues/ Assisted at Hearing	0	1	15	4	0	1	20
Narrowed Issues/ Assisted at Hearing	3	22	22	22	10	9	88
To Adjudication (no informal)	7	18	9	3	n/a	7	44
Report of Investigation	0	2	0	0	0	2	4
Other[6]	1	7	3	3	5	4	23
TOTAL	**15**	**94**	**79**	**46**	**51**	**44**	**329**

1 Includes strikes, lockouts, picketing, etc.
2 Excluding duty of fair representation.
3 Previously included in the "Other" applications category (for report prior to 2003).
4 Reporting of assignments under the Collective Agreement Arbitration provisions of the *Labour Relations Code* new as of 2003.
5 Prior to 2001, these completed assignments were included in the "Resolved Issues/Assisted at Hearing" category for Certification and Expanded Bargaining Unit applications.
6 Includes Consent Order issued.

TABLE 12

Requests for Automatic Certification Pursuant to Section 14(4)(f) of the Labour Relations Code
(Previously Section 8(4)(e) of the Labour Code and the Industrial Relations Act) as a Result of an Alleged Unfair Labour Practice Violation

YEAR	REQUESTED	GRANTED
1977	25	1
1978	17	1
1979	25	1
1980	22	0
1981	34	2
1982	15	2
1983	18	0
1984	21	3
1985	16	2
1986	18	2
1987	17	0
1988	10	0
1989	10	0
1990	18	3
1991	20	1
1992	32	6
1993	31	2
1994	31	2
1995	35	0
1996	41	1
1997	52	3
1998	40	0
1999	51	0
2000	21	1
2001	9	0
2002	12	3
2003	13	0
TOTAL	**654**	**36**

Note: Figures for 1977 to 1992 are from the Board's Annual Reports. Figures for 1993 to 1995 were not included in the Annual Reports for these years.

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.